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An Analysis of Railway Transport Committee Decisions

1967-1980

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AN ANALYSIS OF RAILWAY TRANSPORT COMMITTEE DECISIONS

1967 - 1980

J.D. Gibberd
P. Wesley

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FOREWORD

This study examines decisions of the Railway Transport Committee, over the period 1967-1980, from the standpoint of the socio-economic objectives of the Committee and the degree to which these objectives were consistently followed. This analysis can be considered as a contribution to the self-appraisal by the Canadian Transport Commission of its decisions. The specific request for this study originated with Mr. Guy Roberge, Vice-President of the Commission, and the need for such a study was also inferred in outside reviews of the Commission, including the 1978 study by H.N. Janisch for The Law Reform Commission of Canada. This is the second study to be conducted by the Research Branch in response to these demands. An earlier report, published in 1979, examined the socio-economic consistency of the Air Transport Committee Decisions for the period 1973-1978.

The major conclusion of this study is that, from a socio-economic perspective, the Railway Transport Committee was generally consistent in its approach to decisions. The Committee's economic regulatory activities since the adoption of the National Transportation Act in 1967 have focussed mainly on the rationalization of services and residual rate control. The two most important considerations in the Committee's decisions on rationalization were usage and the adequacy of alternative transport services. The Committee's decisions not to discontinue a passenger train were with the exception of services to isolated communities, always based on evidence of a reasonable level of patronage. In the case of branch lines which, in most cases, had a low level of usage, the decision not to abandon was usually based on the adequacy of alternative transport and the burden that abandonment would place on users. The majority of the decisions falling under the heading of residual rate control dealt with applications under Section 23 of the National Transportation Act. It was seen from these cases that an act, omission or rate was considered to be prejudicial to the public interest if it could be conclusively shown that the applicant was placed at a disadvantage which offset the natural economic opportunities available to him. More explicitly, rail customers shipping products which had reasonably similar handling characteristics and which were being shipped in similar circumstances should be treated equally.

The present study is historical in character in the sense that it deals with past actions of the Rail Transport Committee and their consequences. It is believed that a proper understanding of the present situation requires the historical perspective provided here.

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The study was carried out by J.D. Gibberd and P. Wesley of the Economic and Social Research Group of the Research Branch. The authors wish to thank staff of the Railway Transport Committee, the Traffic and Tariffs Branch, Legal Services and the Research Branch who provided technical assistance. However, as usual, the authors take full responsibility for the contents of this study and the views expressed in this report do not necessarily reflect those of the Commission.

Yves Dubé
Vice-President (Research)

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Chapter 1

INTRODUCTION

1.1 Purpose

This report provides an analysis of past decisions of the Railway Transport Committee (RTC) of the Canadian Transport Commission (CTC). The study was initiated at the request of the Vice-President (Legal) of the CTC, with the objective of determining the consistency of decisions from a socio-economic point of view. A similar type of analysis of the decisions of the Air Transport Committee* has previously been undertaken.

1.2 Approach

Traditionally, the reasons put forward for regulating an industry fall into three categories:

i) Economic efficiency;
ii) Justice and equity of treatment; and
iii) Social and political objectives.

Economic efficiency centres basically around the allocation of resources; the central point in justice and equity of treatment evolves around the avoidance of undue discrimination; while social and political objectives can be extremely diverse involving, for example, such considerations as national unity or defence, or regional development.

The objective of this study is to examine the decisions from a socio-economic point of view and hence the emphasis will be placed on the question of economic efficiency. It should be clear, however, that it is seldom possible to pursue any one of those objectives to the exclusion of the others and hence regulation has to meet goals from each of the areas at the same time.

Economic efficiency is said to occur when there exists an optimum allocation of resources between the different activities of the economy. The existence of such an optimum (which corresponds to the economist's concept of the "Pareto Optimum"), means that no other combination of the same, or fewer, resources can yield a higher level of output. One, but by no means the only, way to achieve economic efficiency is through perfectly competitive markets. Such markets, however, correspond to an ideal world and are very rarely achieved. Market imperfections or failures occur frequently and they could prevent the realization of optimum resource allocations. Economic regulation is one means by which those imperfections may be overcome and economic efficiency restored.

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* J.D. Gibberd, G. Hariton, P. Wesley, An Analysis of Air Transport Committee Decisions, 1973-1978, Ottawa: Canadian Transport Commission, 1979.

Natural monopoly, externalities and imperfect information are three types of market failures frequently offered in support of government regulation.

A natural monopoly exists when it is less expensive for one rather than two or more firms to supply all the output. This occurs when the industry has decreasing average costs and hence enjoys economies of scale. In such a situation, regulation must be substituted for competition.

A similar reduction in competitive conditions may arise when a company's start-up or fixed costs are high. The existence of these conditions may result in de facto monopoly or oligopoly which will discourage potential competitors and provides the opportunity to eliminate current competitors through destructive pricing.

Externalities occur when an economic activity produces incidental negative or positive secondary effects which are not incorporated into the market price. These externalities may affect the welfare of the society as a whole either in a positive or negative way, an example of the latter being air or noise pollution. In such cases perfectly competitive markets will not lead to optimum allocation of resources and economic regulation will be necessary so as to restore economic efficiency.

The competitive market mechanism may also fail when a buyer does not have adequate information on which to base his decision to purchase goods or services. This may occur when the necessary information is either of a highly technical nature, as it is in many cases of product safety, or is very costly to assemble, as in the case of transport tariffs.

Economic regulation may be used to remedy all three types of failure. However, traditional theory has focussed more on natural monopoly. In doing this it has divided the subject into three interdependent parts: control of entry and exit to the market, pricing, and conditions and quality of product. These three divisions provide a background against which the analysis of this text is developed.

A large part of this analysis is devoted to the first area, namely controlling entry and exit. However, unlike the Air Transport Committee decisions where the overwhelming majority of activity concerned entry, the RTC decisions deal largely with exit from the market. The central questions, thus, are not concerned with the number or size of firms to be allowed into a market in order to ensure viable competition; rather they center on allowing firms to rationalize their operations in order to be moreproductive while at the same time trying to ensure that, from the public interest point of view, buyers are left with adequate means of transport.

Railways were originally placed under regulation to guard against abuses of their monopolistic power. It is interesting to note that economists are still debating whether railways are subject to economies of scale and thus, whether they are natural monopolies.

The railways found, subsequent to World War II, that improvements in trucks, highways and aircraft had a significant impact on both their freight and passenger traffic. The loss of traffic also undermined the ability of the railways to use value-of-service pricing to support less profitable traffic. It was precisely the high-valued goods, which made the greatest contribution to fixed costs or overheads, that were lost to the other modes. The inevitable result of these events was the need to rationalize services and in some cases, to exit from the market.

The second major area of concern of traditional regulatory theory, is pricing. Regulatory history in general has not shown an adherence to the requirement of economic theory that price be set equal to marginal cost, mainly due to practical considerations. Instead, attention has focussed on the general rate level and the rate structure. The objective with respect to the former is to arrive at a rate level which will give a firm sufficient revenue to cover expenses and a return adequate to raise new funds on capital markets. The regulatory agency will, to varying degrees depending on circumstances, be involved in defining legitimate expenses, the assets to be included in the rate base as well as cost of capital rate. With respect to the rate structure, concern is usually centered on avoiding undue or unjust discrimination between similar classes of buyers. The question of equity between users in comparable circumstances is the main focus for rail decisions on rates.

Conditions and quality of service, the third area of interest in traditional theory, are not treated as a separate subject in this report. Rather they are included at the appropriate points in the discussion of rationalization of services and pricing.

The subjects analyzed within these two areas include: passenger train abandonment, Prairie and Nonprairie branch-line abandonment, removal of station agents, use of trucks by the railways to accommodate traffic, and rate decisions. An extensive review of railway costing was recently completed by the CTC* and hence, this subject is not dealt with in depth in this report but is only referred to in order to give a fuller explanation of various points in the analysis. Decisions on the Railway Grade Crossing Fund and railway relocation were omitted because their primary orientation is towards safety or urban development rather than economic regulation. The same reasoning also applies to the exclusion of decisions with respect to railway accidents and other safety matters.

The analysis relies on the published RTC decisions and reports along with their applicable orders. Reference is also made to CTC Review Committee decisions and judgments of higher courts when appropriate. Documents internal to the RTC were not used for two reasons: first was the desire to reduce the volume of material to be treated to manageable proportions and second to analyze only decisions and orders from which the public must form their understanding of railway regulatory matters.

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* Railway Costing Study, "Report on Phase 1", August 1978.

Railway Costing Study, "Report on Phase 2", Volumes One to Five, October 1979.

1.3 Format

The remainder of the report is divided into five chapters, four contain the analysis and one the summary and conclusions. The four analytical chapters are organized so that each one focuses on one broad subject area. Chapters 2 through 4 each concentrate on different aspects of the railways' efforts to rationalize services and abandon plant while Chapter 5 looks at residual rate control cases. More specifically; Chapter 2 examines decisions on passenger train discontinuance; Chapter 3, decisions on the abandonment of Prairie and Nonprairie branch lines; Chapter 4, decisions on the related issues of station agent removal and substitution of trucking services for freight trains; and Chapter 5, decisions on both freight and passenger rates and conditions of tariffs.

It is noted that in the last three chapters, each broad subject area covers more than one topic and that the decisions on each topic are analyzed separately. For example, in Chapter 3, Prairie branch-line decisions are analyzed and then Nonprairie decisions are examined.

In the analytical chapters, the historical events pertinent to each group of decisions analyzed, are presented and the institutional setting within which the decisions were made is examined. The latter includes a fairly detailed description of the relevant statutes, regulations and government policies. Once this necessary background material is reviewed the decisions are then analyzed. At the end of Chapters 2, 3 and 5, a short summary is also provided.

The analysis of each group of decisions begins with an examination of the appropriate decisions, order and reports so as to identify and describe the manner in which the relevant acts, regulations and policies have been applied. This method of analysis makes it possible to determine whether or not the approach adopted (or followed) by the RTC has been consistent over time. Particular attention is given to any case whose outcome appears to be an exception to the pattern in order to isolate any special circumstances that might account for such a finding.

Chapter 2

RAIL PASSENGER TRAIN DISCONTINUANCE

2.1 History

Passenger-train service has played an important part in the development of Canada. For a considerable period it was the only means of fast and efficient transport available for intercommunity travel. It also provided the essential east-west link in Canada and in this role helped to bring many immigrants to their new life on the Prairies. However, the passenger market started changing after 1945, leaving travellers with more choices of transport and the trains with fewer passengers. Financial losses were becoming larger and more apparent, but at the same time the ability of more profitable areas of railway operations to cover this shortfall was severely diminished. There was a need to rationalize services and a necessity to define the role of trains in the overall context of passenger transportation.

Passenger traffic was bolstered by troop movements and other travel made necessary by World War II and reached a peak in 1944 in terms of both passengers carried and passenger-miles performed. During the 1930's and especially after 1945, highways were extended and improved, and, at the same time, car ownership became more widespread and bus lines developed. The result was the erosion of rail passenger traffic, particularly in the short to medium-haul distances. Also, since the mid 1950's, developments in aircraft technology made possible the use of airlines by a much larger portion of society. This too had its impact on rail patronage, especially in the long-haul markets where time savings were of critical importance.

Along with the decline in passengers, railways were also experiencing a loss of high-valued freight traffic to trucking companies which now had access to improved equipment and better highways. It was particularly the high-valued freight which had provided funds to support less profitable operations under a value-of-service pricing system that was lost.

The economic problems of passenger services were also exacerbated by the eventual loss of express and mail traffic. This was due to changes in the patterns of distribution for both types of traffic. One advantage was that their removal from passenger services permitted increased train speeds. However, both mail and express were likely in the category of traffic that made a contribution to less profitable operations and thus their disappearance meant an increase in overall passenger losses.

Two points with respect to passenger-service profitability should be highlighted. First, there was relatively little increase over the years in fares whereas costs continued to escalate. The railways judged it to be inappropriate to raise fares significantly for they held that demand was highly elastic and the revenue shortfall would be increased rather than decreased. It was thus considered desirable to keep fares competitive with other modes of transport. Second, in looking at passenger operations the question naturally arises as to whether they had ever been profitable. On the basis of fully allocated costs there appears to be some evidence that it was only during exceptional periods that revenues were sufficient to cover costs. This is illustrated by a quotation from A.W. Currie:

> Accurate statistics are lacking but it is clear that passenger departments do not pay. Canadian railways do not follow the American practice of regularly breaking down their total expenses between passengers and freight. On the Canadian National only about 38 per cent and on the Canadian Pacific only about 30 per cent of the total operating expenses can be directly separated in the company's accounts. The balance must be apportioned on what the railways describe as an arbitrary, statistical, or theoretical basis. In 1925 the passenger, sleeper, diner, mail, express, baggage and milk services of the Canadian National failed by $8 million to earn their share of the gross costs when these were divided on the basis of ton-miles.[13] Sir Henry Thornton, then president of the System, stated that every railway in North America lost money on its passenger service.[14] In the Twenty-one Per Cent Case the Board concluded that although the evidence was insufficient to allow specific findings of the actual extent of profits and losses, "the passenger service shows consistent deficits except during the heavy movement of passengers and troops during the period of the last war and the year following".
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> 13. Re Inquiry into Cost of Transportation of Coal, (1927), 17 O.R.R. 439, 464. In 1929, the corresponding loss was $10 million. Canada, House of Commons Committee on Railways, 1930, Proc., p. 6. In 1931, it was $24 million. Ibid., 1932, p. 63.
>
> 14. Ibid., 1925, p. 12.*

Further estimates of losses on various cost bases are available for 1958, the 1960's and the 1970's from the MacPherson Royal Commission on Transportation,** the proceedings of the House of Common's Standing Committee on Transport and Communications (1966)*** and the decisions of the Railway Transport Committee (RTC). The latter source provides estimates which are calculated in accordance with RTC Order No. R-6313 which specified an avoidable cost approach.****

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* A.W. Currie, Economics of Canadian Transportation, Toronto: University of Toronto Press, 1954, p. 344.

** Canada, M.A. MacPherson, Chairman, Report of the Royal Commission on Transportation, Vol. 1, Ottawa: The Queen's Printer, 1961, p. 27.

*** Canada, House of Commons, Standing Committee on Transport and Communications, Official Report of Minutes of Proceedings and Evidence, No. 1 Ottawa: The Queen's Printer, March 3, 1966, p. 52.

**** Canada, Canadian Transport Commission, Railway Transport Committee, Reasons for Order No. R-6313 Concerning Cost Regulations, Pamphlet No. 15, Ottawa: Canadian Transport Commission, August 5, 1969.

The railways' response to the decreasing demand for passenger service and increasing losses was to introduce economies of operation through the removal of trains, the reduction of frequency and the number of cars in a train; to change the provision of on-board amenities such as the substitution of cafeteria cars for dining cars; and to substitute Rail Diesel Cars for convential trains where possible.

Starting in 1962, CN phased in an innovative pricing scheme which was successful in stimulating a large growth in traffic. The Red, White and Blue Fare Plan differentiated fares in relation to the intensity of demand, introduced a mileage taper, increased the difference between coach and sleeping car fares and included the cost of meals in the sleeping car fare. CP also introduced a new pricing scheme, the Faresaver Plan, in the early sixties but it met with little success in the absence of effective marketing.

CP's policy, as stated in 1966, was to provide service where there was an effective demand — that is, a demand which would contribute sufficient revenues to cover the costs incurred in providing the service.* CN's policy was to provide intercity services where there was a high population density which would make the services economical or where there were signs that traffic would generate sufficient revenue to cover costs.** All other services would either be dropped or have to be supported by public funds. CN pointed out that in order to have an effective demand it was necessary to have effective marketing effort and effective service. It was this latter statement which was put into action by CN through improved marketing and train services and which differentiated CN's approach to passenger-trains from that of CP.

In order to complete this brief historical sketch, it is necessary to look at the actions of government and its agencies with regard to passenger-train services. The agency preceding the RTC was the Board of Transport Commissioners. The Railway Act*** which was in effect before 1967, did not specifically provide for treatment of passenger-train discontinuance by the Board. However, sections 33, 34 and 35 of the Act gave the Board sufficient authority on this type of case. The approach adopted by the Board in handling passenger-service discontinuances was summarized in its judgment on the CPR's transcontinental train, the Dominion:

> ...The policy of the Board, uniformly applied throughout Canada, has been to judge as best it can the need of the public for train services and decide whether loss and inconvenience to the public consequent upon discontinuance of train service are outweighed by the burden that continued operation of the service would impose upon the railway to such an extent as to justify discontinuance of the service. The point at which discontinuance shall be considered justifiable is a matter of sound judgment. The situation in each

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* Standing Committee on Transport and Communications, op. cit., No. 22, July 5, 1962, pp. 1631-1641.

** Standing Committee on Transport and Communications, op. cit., No. 1, pp. 44-67.

*** Railway Act, Revised Statutes, 1952.

case calls for a decision by railway management in the first instance, but the management decision may be reviewed by the Board upon application or complaint or of its own motion. In arriving at its decision the Board takes into conside-ration all relevant factors, including the population and economics of the area concerned, the need of the public for train service and the kind of service given, the volume of patronage by the public and the prospects for patronage in future, alternative transportation services, revenues and expenses of the service, and the burden to the railway company of continuance of service and the effect on it of discontinuance.*

The MacPherson Royal Commission on Transportation also played an important part in shaping the future of rail passenger service in Canada. The mandate of this Commission was to inquire into railway problems and look at the possibility of removing or alleviating freight-rate inequities. It advised the government in 1961 that passenger service should be provided only where it was economic. Furthermore, if uneconomic services were to be operated because no alternate forms of surface transport were available then the deficit should be met by public funds. The Commission stated that the freight service could no longer carry the burden of passenger operations. The railways' view that services could be rationalized over five years was accepted but it was held that, even over this period of time, freight services should not have to carry passenger deficits. Therefore, a five year programme of diminishing subsidies to cover the passenger-revenue shortfall was recommended.

The passage of the National Transportation Act (NTA) in 1967 placed into law many of the recommendations of the MacPherson Commission. A general transportation policy was set out, the Canadian Transport Commission (CTC) was established and a number of amendments were made to the Railway Act, including specific provisions for the discontinuance of service and payment of subsidies. The details of this part of the legislation will be discussed in the next section. But, at this point, it is worthwhile noting that the requirements set out by the legislation for the CTC to follow in deciding discontinuance cases were less stringent than the MacPherson Commission recommendation that services be either economic or essential.**

Since the passage of the NTA, the RTC has issued over 70 decisions and reports pertaining to passenger-train discontinuance. These decisions form the base for the analysis undertaken in this chapter.

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* The Board of Transport Commissioners for Canada, Judgments, Orders, Regulations and Rulings, Vol. 56, Ottawa: The Queen's Printer, 1966, pp. 54-55.

** In the decisions analyzed in this report, the statutory duties assigned to the Canadian Transport Commission have been carried out by the Railway Transport Committee pursuant to subsection (3) of section 24 of the National Transportation Act and the General Rules made by the Commission pursuant thereto. Therefore, in the remainder of the report reference will be made to the Railway Transport Committee (RTC).

Since 1967 there have been several government initiatives relevant to passenger-train services. In 1975, a transportation review initiated by the Minister of Transport resulted in three reports, two of which were termed interim.* One recommendation was that passenger service attain commercial self-sufficiency. It was further suggested that a plan for attaining self-sufficiency be developed and that a directive for guiding the CTC in its mandatory review of discontinuance decisions be prepared. Emphasis was also placed on the potential role of buses which, it was claimed, were not subsidized. Subsequently, in January of 1976, the Minister of Transport issued a policy on rail passenger services** and a subsidiary directive*** for the guidance of the CTC in its deliberations with respect to passenger services. At this point, it is only necessary to mention the main direction of the policy although both documents will be discussed in greater detail in the following section. The policy was concerned with development of an economically and socially justified national passenger network. In order that a higher degree of financial self-sufficiency be obtained, the elimination of unnecessary duplication of services was deemed essential. Towards the same end, it was stated that, in those particular markets where it was found that rail service was not suitable, air and bus should be encouraged to offer the services. The policy thus was aimed at providing efficient and economic rail-passenger service where there were sufficient passengers willing to pay for such service. The policy did, however, allow for one exception to this objective. It stated that services in remote areas where no reasonable transportation alternatives were available should be continued.

The government also embarked on a programme of upgrading rail-passenger services in the Québec City — Windsor Corridor. Work began on the Québec City — Montréal segment of this corridor with the expectation that it would be subsequently extended to other sections. The programme included improvements in roadbed, track and signals, as well as the purchase of new train sets. In all, ten LRC (Light, Rapid, Comfortable) train sets were ordered, with some to go to that corridor and the remainder, to routes elsewhere in Canada. Plans have since been altered to an extent and the intention now is to begin service on the Montréal — Toronto Corridor.

Finally, mention must be made of the creation of VIA Rail Canada Inc. This Crown Corporation, which was brought into being in 1977, has taken over, with the exception of CN's Newfoundland services, the responsibility of marketing, management and operation of all CN's and CP's rail-passenger services. VIA enters into contracts with the government to provide designated services and is reimbursed for the deficits on operations. Prior to VIA, CN and CP received subsidies from the government upon recommendation of the RTC. These subsidies were paid to services that the RTC ordered not to be discontinued — this encompassed virtually all CN and CP intercity services prior to the birth of VIA — and were equal to 80 percent of verified losses.

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* Canada, Transport Canada, Transportation Policy: A Framework For Transport in Canada, Summary Report; An Interim Report On Inter-City Passenger Transport Movement In Canada; An Interim Report On Freight Transport In Canada, Ottawa: The Queen's Printer, June 1975.

** Canada, House of Commons, Minister of Transport, Otto Lang, "Statement on Rail Passenger Services", Jan. 29, 1976, Debates Vol. X, 1975-76, Ottawa: The Queen's Printer, pp. 10437-10439.

*** Canada, Transport Canada, Directive For The Guidance Of The Canadian Transport Commission On Rail Passenger Services, Ottawa: The Queen's Printer, Jan. 29, 1976.

2.2 Institutional Setting

This section discusses those parts of acts, orders, regulations and government policies which are applicable to the discontinuance of a passenger-train service. Amendments made to the Railway Act in 1967 specifically provided for the discontinuance of passenger-train services and the provision of subsidies. Sections 260 and 261 of the Railway Act govern these procedures.

2.2.1 Legislation

2.2.1.1 Section 261 of the Railway Act

Since subsidies per se are not analyzed in this report, it is only necessary to make a few brief comments here on section 261 in order to provide some background to the passenger-train discontinuance process. For a passenger-train to be eligible for a subsidy, it had first to be declared uneconomic and then ordered not to be discontinued. This could happen only if the railway had first made an application for discontinuance under section 260. Thus, a railway had to apply for discontinuance regardless of whether it really wanted to drop a service or only to continue it with public support. This process is still in existence both in the case of VIA and other operations not falling under its jurisdiction.

According to subsection (8), section 261, of the Railway Act, "...a passenger-train service accommodating principally persons who commute between points on the railway company providing the services" is not eligible for a subsidy as outlined in subsections (2) to (7).* Some of the services which have been ordered continued by the RTC, do, in fact, carry commuter passengers. However, all but one of these services have been considered as being intercity by the Committee. The one exception, CP's Montréal - Farnham service, was initially declared to be a passenger service pursuant to section 260. However, this declaration was later withdrawn on the basis that the service was essentially commuter in nature. The distinction between commuter and noncommuter services is not analyzed further here because this report does not deal with legal or subsidy questions.

2.2.1.2 Section 260 of the Railway Act

The passenger-train discontinuance process is set out in section 260 and is further supplemented by various orders and regulations.

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* Railway Act, Revised Statutes, 1970, subsection 261(8).

Subsection 260(1) states:

> "passenger-train service" means such train or trains of a company as are capable of carrying passengers and are declared by an order of the Commission, for the purposes of this section and section 261, to comprise a passenger-train service.*

Order No. R-31300 (previously R-6751) declares which trains and substituted road services are to be considered passenger-train services and specifies a minimum frequency that will satisfy the requirements of section 262 of the Railway Act that a railway provide adequate and suitable service.

Subsection 260(2) requires that if a company wants to discontinue a passenger service it must make an application to the RTC.** Furthermore, Order No. R-31300 stipulates that if a railway wants to reduce frequencies below the minimum or change the route of a service it must make an application to the RTC.*** If, however, the railway wants to alter frequencies above the minimum or modify the period of operation of peak services it must only give 30 days notice to the Committee.

In accordance with subsection 260(3), a discontinuance application must be accompanied by a statement of costs and revenues of the service for a specified number of time periods. The "Regulations Governing Applications to Discontinue Railway Passenger-Train Service," as set out by Order No. R-6316,**** established that these statements of costs and revenues shall be submitted for the three consecutive financial years preceding the date of the application.***** The Committee is then required by subsection 260(4) to review the statements along with any material that it may deem as being relevant, in order to determine whether the service has operated at a loss in any of the prescribed years. If it is found that a loss was incurred in one or more of the three years including the most recent one, the Committee is required by subsection 260(5) to determine if the service is uneconomic. This is not necessary, however, if there were no loss in the most recent financial year because such a determination requires that the application for dropping the service be rejected.

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* The term "actual loss" is also defined in subsection 260(1) but is not dealt with here because costing issues, as mentioned in the Introduction, are not treated in this report. The basis for the determination of costs is set out in Order No. R-6313.

** Railway Act, (1970), subsection 260(1).

*** Order No. R-31300, August 14, 1980, in the matter of Order No. R-6751 and subsequent Orders pertaining to frequency and routing of passenger-train services.

**** Order No. R-6316, August 1969, "In the Matter of Section 314I of the Railway Act and the Regulations Governing Applications to Discontinue Passenger-Train Service."

***** If the application is filed before April 1, the three financial years will be deemed to be the three financial years preceding their most recent one. If this application is still pending after April 1, the company must also submit a statement for their most recent year.

The meaning of the term uneconomic was examined in Reasons for Order No. R-6313. The Committee held that the term refers only to railways and not other modes.* It said:

> The Committee concurs with the consensus of the parties that "uneconomic" refers to the performance of railway operations only. To include such considerations as the cost of alternative modes of transportation as determinants of "uneconomic" would raise the possibility that highly unprofitable lines could be designated "economic" and therefore ineligible for subsidy only because alternative transportation is either unavailable or more costly. Such a result would be contrary to the National Transportation Policy as laid down in section 1(c) of the National Transportation Act that "each mode of transport, so far as practicable, receives compensation for the resources, facilities, and services that it is required to provide as a public duty".

The RTC then went on to clarify the difference between "unprofitable" and "uneconomic". It stated:

> On the other hand, the Railway Act clearly contemplates that the finding of "uneconomic" is a subsequent and more comprehensive determination than the establishment of an actual loss. While we agree that in the context of the Act the term "unprofitable" is probably as close a synonym to "uneconomic" as can be found, we are impressed by the fact that the Act nevertheless uses the word "uneconomic" rather than "unprofitable". To the extent that there are any differences in shades of meaning between these two words, the Act intends that such differences should be reflected in the Committee's considerations. The principal difference in meaning lies in the emphasis which the word "uneconomic" lays on the intrinsic or fundamental nature of unprofitability, as opposed to temporary unprofitability or unprofitability which could be eliminated through operating changes within the present capability of the railway system.**

The Committee later went on to define an uneconomic passenger-train service as:

> ...one which is incapable of being rendered profitable to the railway under any feasible alterations in railway operating practices, equipment assignment, scheduling, pricing, or other aspects of passenger service under railway control.

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* Though the two quotations that follow were taken from a discussion pertaining to the abandonment of branch lines, they are just as applicable to passenger-train services. In the Decision, October 30, 1970, pertaining to an application by Canadian Pacific Limited to discontinue passenger-train service between Victoria and Courtenay, B.C. both passages were quoted to explain the term "uneconomic".

** RTC, Reasons for Order No. R-6313, p. 403.

Once the Committee finds that a service is uneconomic, it must then decide whether or not it should be discontinued. Subsection 260(6) sets out some of the considerations to be included in evaluating the public interest in the discontinuance decision:

> (6) In determining whether an uneconomic passenger-train service or parts thereof should be discontinued, the Commission shall consider all matters that in its opinion are relevant to the public interest including, without limiting the generality of the foregoing,
>
> (a) the actual losses that are incurred in the operation of the passenger-train service;
> (b) the alternative transportation services, including any highway or highway system serving the principal points served by the passenger-train service, that are available or are likely to be available in the area served by the service;
> (c) the probable effect on other passenger-train service or other passenger carriers of the discontinuance of the service, or parts thereof; and
> (d) the probable future passenger transportation needs of the area served by the service.*

The preamble to the NTA sets out in broad terms a national transportation policy which must also be considered as forming part of the public interest:

> It is hereby declared that an economic, efficient and adequate transportation system making the best use of all available modes of transportation at the lowest total cost is essential to protect the interests of the users of transportation and to maintain the economic well-being and growth of Canada, and that these objectives are most likely to be achieved when all modes of transport are able to compete under conditions ensuring that having due regard to national policy and to legal and constitutional requirements...**

This policy, though, unlike the four concerns quoted earlier, is seldom referred to explicitly in the decisions. It must, however, be considered as part of the background framework against which the decisions are made and thus must definitely be kept in mind when the decisions are analyzed.

Once the RTC has decided not to discontinue a service it is required to reconsider the application at intervals not exceeding five years. If the service has since become economic, the application is to be rejected but if it remains uneconomic, the Committee again must decide whether or not to discontinue it.

It is also of some benefit in understanding the RTC's role in the discontinuance process to mention what the Committee is not empowered to do by legislation. In the Preferred Plan for Western Transcontinental Passenger Train Service, of April, 1977, the Committee stated:

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* Railway Act, (1970) subsection 261(6).

** National Transportation Act, Statutes of Canada, 1966-67, section 1.

> Under the law the Canadian Transport Commission may not:
>
> 1. provide for full payment of passenger train losses, let alone pay additional money for operational and financial incentives or capital investment in passenger equipment.
> 2. require Canadian National and Canadian Pacific to operate their passenger-train services under any kind of single or unified management and operating structure.*

2.2.1.3 Section 262 of the Railway Act

Finally, section 262 of the Railway Act should be mentioned even though it is not directly related to discontinuances. However, in cases heard under section 262, the central focus is often on the need for the service and the type of accommodation offered by the carrier. Subsections (1), (3) and (6) of section 262 are of interest here and they read as follows:

> (1) The company shall, according to its powers,
> (a) furnish, at the place of starting, and at the junction of the railway with other railways, and at all stopping places established for such purpose, adequate and suitable accommodation for the receiving and loading of all traffic offered for carriage upon the railway;
> (b) furnish adequate and suitable accommodation for the carrying, unloading and delivering of all such traffic;
> (c) without delay, and with due care and diligence, receive, carry and deliver all such traffic;
> (d) furnish and use all proper appliances, accommodation and means necessary for receiving, loading, carrying, unloading and delivering such traffic; and
> (e) furnish such other service incidental to transportation as is customary or usual in connection with the business of a railway company, as may be ordered by the Commission.
> (3) If in any case such accommodation is not, in the opinion of the Commission, furnished by the company, the Commission may order the company to furnish the same within such time or during such period as the Commission deems expedient, having regard to all proper interests; or may prohibit or limit the use, either generally or upon any specified railway or part thereof, of any engines, locomotives, cars, rolling stock, apparatus, machinery, or devices, or any class or kind thereof, not equipped as required by this Act, or by any orders or regulations of the Commission made within its jurisdiction under the provisions of this Act.
> (6) For the purposes of this section the Commission may order that specific works be constructed or carried out, or that property be

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* Canada, Canadian Transport Commission, Rail Transport Committee, Preferred Plan for Western Transcontinental Passenger Train Service, Ottawa: Canadian Transport Commission, April 1977, p. 3.

> acquired, or that cars, motive power or other equipment be allotted, distributed, used or moved as specified by the Commission, or that any specified steps, systems or methods be taken or followed by any particular company or companies, or by railway companies generally, and the Commission may in any such order specify the maximum charges that may be made by the company or companies in respect of any matter so ordered by the Commission.*

In summary, these subsections set out the obligation of the railways to provide service, the powers of the RTC to order the railways to provide it if they will not do so on their own accord and, the power of the RTC to set maximum rates for such services.

2.2.2 The Minister of Transport's 1976 Policy Statement and Directive

To complete this review of the institutional setting with its emphasis upon the legislative framework, this discussion now turns to the policy statement** and directive*** which were mentioned in the previous section.The policy statement, which was issued by the Minister of Transport in January of 1976, was directed towards the development of an efficient and economic rail passenger network where there were sufficient passengers willing to pay for and use it. It contained only one qualification which was that services in remote areas where there were no reasonable transportation alternatives should be continued. The statement, as it was presented by the Minister to the House of Commons, outlined the future roles of passenger trains:

> We believe, Mr. Speaker, that there are potentially three major roles for passenger trains; roles that can be filled at reasonable subsidy levels, providing services are improved and operated efficiently and economically. First, are short to medium distance services between major cities where rail offers the potential of trip times somewhere between those of automobiles, buses and aircraft; second, are commuting trips in and about major cities for the movement of large numbers of people; and third, are long distance trips across the breadth of the country where trains might provide a higher level of basic service than buses. Rail services should also be continued in those remote areas of our country where no reasonable transportation alternatives exist...
>
> However, Mr. Speaker, on some routes in Canada, passenger trains do not serve the public well. In our view, bus and air transportation can often provide the public with better quality and more frequent services at lower cost. It is the government's intention to encourage the development of these services to replace passenger trains on routes where trains are poorly suited to the market or poorly patronized.

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* Railway Act, (1970), subsection 262(1), (3) and (6).

** Minister of Transport, House of Commons, Debates, pp. 10437-10439.

*** Transport Canada, Directive For The Guidance of the Canadian Transport Commission, op cit.

> It is our intention to work towards an economically and socially justified national network of rail services. We propose that a basic network of intercity, coast to coast and commuter services, coordinated with air and bus service, where possible, be implemented. This will provide Canadians with an opportunity to respond to improved services and for us to understand the nature and degree of this response.*

The policy statement was accompanied by a directive to the CTC that called for the development and implementation of a plan for a basic rail-passenger network. The plan was to tailor the economic and technical characteristics of rail to the objective of commercial self-sufficiency, taking into account the needs of rail passengers as expressed by usage. The directive went on to say:

> 4. This plan should provide a basic single service network of rail passenger services across Canada, integrated to the greatest degree feasible with services provided by bus and air as well; and should offer services between both the Pacific and Atlantic coasts and Central Canada and within the Central Canadian corridor from Windsor to Québec, while avoiding duplication of service by either or both national railway companies.
>
> 5. The objective should be to seek the best method of satisfying passenger requirements regardless of mode and, in particular, to be guided by the following specific principles:
>
> (a) a substantial reduction in present levels of subsidy to rail passengers and a much greater degree of economic self-sufficiency in operation should be achieved.
> (b) the basic network should include a main rail framework and connecting services by rail or other modes and avoid unnecessary duplication of services.
> (c) common use of facilities and common provision of service support wherever feasible between both CN and CP.
> (d) capacity offered should be more closely related to traffic actually carried on a continuing basis and less costly service or equipment alternatives should be considered.
> (e) improvement of timetables should be sought for interconnecting services regardless of mode, and the time of availability of services improved.
> (f) rail fares charged should reflect the need to improve commercial viability and reduce subsidy levels; costs of improvements in quality and reliability of service should be reflected in pricing policy.
> (g) provision of additional service standards and amenities over and above basic coach class requirements should be fully at the expense of the user.

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* Minister of Transport, House of Commons, Debates, p. 10438.

(h) rail passenger service should not be abandoned in any case where no other commercial service exists.*

2.3 Analysis

The nature of the passenger-transport market has changed over time and this has required adjustments in the type of rail-passenger service provided. In some cases, it has meant an exit from the market and in others, it has brought an altered type of service more closely tailored to the needs of the users. The obvious question to pose is why this adjustment process has not been left to the natural forces of the marketplace. The answer begins with the fact that the characteristics of supply and demand are such that even with adjustments, the services would operate at a financial loss and thus there is an impetus for the railway companies to exit completely from the market. The public, however, through its government, felt that the benefit of rail-passenger services in some cases was great enough to retain them and thus the need for government intervention. The RTC was specifically charged by the government with the responsibility of overseeing the passenger-train discontinuance process. This was done through amendments made to the Railway Act when the National Transportation Act was passed in 1967.

The NTA also established the policy of having:

> 3. ... an economic, efficient and adequate transportation system making the best use of all available modes of transportation at the lowest total cost...**

This policy, though infrequently referred to explicitly in the decisions, forms an important part of the framework against which decisions are made. The examination presented in this section makes reference to the policy in order to determine if the decisions have been consistent from a socio-economic viewpoint. Evidence of the Committee's approach to fulfilling the policy can be found in part in the RTC's response to the four concerns which it is directed to consider when making the discontinuance decision — actual loss, available alternative transport, impact on alternatives and future transport needs of the area (Railway Act, subsection 260(6)). In essence this subsection aids in establishing the role of rail-passenger service in providing an adequate passenger-transport system in the area in question and it also helps in understanding what would be the best use of available modes of transport at the lowest total cost. The decisions also provide evidence of the Committee's efforts to meet the policy requirement that the passenger-transport system be economic and efficient.

The analysis of the economic consistency of decisions that follows is presented under four headings: The Committee's General Approach to the

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* Transport Canada, Directive for the Guidance of the Canadian Transport Commission on Rail Passenger Services, pp. 1-3.

** National Transportation Act, Statutes of Canada, 1966-67, section 3.

Discontinuance Process, The Committee's Approach Viewed Over Time, Rationalization of the Transcontinental Trains, and Section 262 of the Railway Act.

2.3.1 The Committee's General Approach to the Discontinuance Process

2.3.1.1 Uneconomic Services and Decision to Discontinue

Once the RTC has established that a passenger-train service has incurred a loss in one or more of its last three financial years, including the most recent one, it must then decide if the service is uneconomic. In all but one case the Committee has found the services to be uneconomic in that it was not possible to render them profitable through any feasible alterations to factors within the railways' control. The one exception was the Committee's 1970 decision to dismiss the application by CP on behalf of the Esquimalt and Nanaimo Railway to discontinue its passenger service between Victoria and Courtenay on Vancouver Island. It was stated by Commissioner Jones in the Decision that:

> It remains to be demonstrated to my satisfaction that the standard of service cannot be raised with at least an improvement in revenue as one result. The evidence at the hearing has convinced me that the E & N passenger train between Victoria and Courtenay is being run without any real regard for the comfort and convenience of passengers and with insufficient attention to the commercial principles that the Canadian Pacific Railway applies to its other business with such success. Until we have evidence before us that the service is being properly run so far as it is within the power of CP Rail to do so, it is impossible for us to make the determination whether the service is uneconomic and is likely to continue to be uneconomic.*

Before dismissing the application, he listed a number of improvements in service that the railway should make.

In the same decision, Commissioner Jones discussed why the various factors under a railway's control are important and then went on to note that certain things were external to the railway's control:

> The care with which a railway company attends to all of the matters just mentioned - scheduling, advertising, equipment assignment, accommodation for passengers, as well as others - is reflected directly in the extent to which the public will use the railway passenger train. And for the obvious reason that it is the passenger who pays the fare, there will be the same direct effect on the revenue, and thus the profitability of the train.

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* Decision, October 30, 1970 - Application by CP on behalf of Esquimalt and Nanaimo Railway Company to discontinue passenger-train service between Victoria and Courtenay, B.C., pp. 20-21.

> There are many factors external to the railway, over which it has little direct control, that influence a passenger to select some alternative, competing form of transportation. The speed of the aircraft, the cheapness of the bus and the convenience of the private automobile are just a few. If the preference of the public for the alternative mode becomes sufficiently all-pervasive in a given situation, it may be that the competing railway passenger service has become intrinsically unprofitable. In that situation, the barrier to profitability is so fundamental in nature as to render the service uneconomic.*

A further comment with respect to forces external to the railway was made by the RTC on the 1972 Mid-Canada Decision:

> There are many factors beyond a railway company's control, which could bring about a situation in which passenger-train services cannot operate profitably. Some of these situations may be temporary, such as those which occur from time to time where the traffic and the revenue relate largely to the tourist season. In other cases, the situation may be of a more permanent nature such as one where traffic offering is generally local and potential revenue is adversely limited by the restricted size and in some cases the decreasing populations at a large number of on-line centres.**

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* Ibid., pp. 19-20.

** Decision, December 28, 1972 - Applications of CN to discontinue passenger-train services between: Québec and Chicoutimi; Montréal and Hervey; La Tuque and Parent; Parent and Senneterre; and between Senneterre—Noranda and Rouyn

- Application of CN to discontinue passenger-train service between Québec — Senneterre and Cochrane

- Application of CN to discontinue passenger-train services between: Toronto — North Bay and Kapuskasing; Hornepayne and Manitouwadge; Hearst and Nakina; and between Sioux Lookout and Thunder Bay North

- Application of CN to discontinue passenger-train service between Winnipeg and Thunder Bay North

- Applications of CN to discontinue passenger-train services between: Winnipeg — The Pas — Thompson and Churchill; Flin Flon—Cranberry Portage and Osborne Lake; The Pas and Lynn Lake; Dauphin and Winnipegosis; and Wabosden—Gillam and Churchill

- Application of CN to discontinue passenger-train service between Jasper— Prince George and Prince Rupert

- Application of CN to discontinue passenger-train service between McBride and Prince George

- Application of Nipissing Central Railway Company to discontinue passenger-train service between Swastika and Noranda, p. 13.

If the RTC finds that a service is economic, then it is required to dismiss the application for discontinuance. However, if the service is found to be uneconomic, the Committee must decide whether or not to discontinue it. The discussion that follows draws upon various decisions to illustrate the approach the Committee has adopted in making the discontinuance decision.

The decisions show that, in general, the RTC has based its approach on the criterion of usage. If a service is found to be inherently uneconomic but there is evidence of a reasonable level of patronage — albeit a level which represents a load factor noticeably below and not just bordering on the breakeven point — it has ordered that the service not be discontinued.Incorporated into the whole approach, as stipulated by subsection 260(6) of the Railway Act, is a consideration of the actual loss, alternative transport availability, impact on alternative modes and future transport needs of the area. Of course, in isolated areas, where alternatives are non-existent or are very limited the Committee has set aside its criterion of a reasonable level of usage. The following quotations from RTC decisions illustrate the Committee's approach. In 1970, when deciding on CP's application to discontinue "The Canadian", the Committee said:

> ...In these circumstances and taking into account the loss incurred by "The Canadian", the Committee determines that "The Canadian", as presently operated and without rationalization of the passenger-train services comprised therein, is uneconomic and is likely to continue to be uneconomic. However, after considering all matters that in its opinion are relevant to the public interest including the fact that significantly large numbers of people use these passenger-train services, [emphasis added] the Committee determines that "The Canadian" should not be discontinued at this time and that the question of discontinuance should not be reconsidered until the results of the operation of "The Canadian" under a plan of rationalization can be assessed.*

In 1971, in a decision on CP's plan to rationalize "The Canadian" the Committee stated that:

> We believe the purpose of Parliament authorizing the provision of subsidies to meet losses in passenger-train service is to ensure the

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* Decision, 1970 - CP: Montréal/Toronto — Vancouver, "The Canadian" p. 16.

> continuance of services required to meet the public need for basic transportation.*

And later in the same decision:

> In viewing this problem the Commission has the duty to consider the public interest from two points of view. The first is to ensure the provision of essential facilities for passengers to move, at reasonable cost, between Montréal and Toronto and the Pacific Coast and on the intercity sections of the railways between the Pacific Coast and Montréal and Toronto. *Such a subsidized service can be justified only so long as there is sufficient traffic offering.*** [emphasis added]

These two statements taken together show the Committee's intent to allow the continuation of a basic passenger service as long as there is significant usage even in situations where alternatives exist as in the case of transcontinental service.

Again in its 1971 *An Interim Report by the Railway Transport Committee On The Rationalization Of Montréal/Toronto — Vancouver Passenger-Train Services*, the RTC declared:

> The Commission has made a firm decision that passenger train service on the Montréal/Toronto — Vancouver route will be continued in the public interest for as long there is a substantial level of traffic.***

A further illustration of this position is found in the Committee's 1972 decision on the passenger trains operating in Central Canada "corridor" services:

> The Committee reminds those concerned that in areas of healthy competition, such as the Corridor area generally, the extent to which uneconomic passenger-train services are used must be the ultimate

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* *Decision*, 1971 - CP: Montréal — Toronto — Vancouver, "The Canadian", p. 14.

** *Ibid*., p. 17.

*** Canada, Canadian Transport Commission, *An Interim Report by the Railway Transport Committee on the Rationalization of Montréal/Toronto — Vancouver Passenger-Train Services*, Ottawa: Canadian Transport Commission, November 4, 1971, p. 2.

determinant of their continued or potential operation at the expense of the Canadian taxpayers.*

A final example of the Committee's commitment to the usage criterion is taken from the 1977 report and order on CN's Québec service running between Richmond, Lyster and Québec City. Commissioner Guy Roberge, Vice-President of the CTC, stated:

> I cannot but say that where the passenger-train service offered to the population is so little patronized and where adequate alternative public transportation is available and used by a large proportion of that population, the use of public funds to subsidize the very small number of passengers who use the train service is, to say the least, a questionable allocation of resources. This comment applies to the service under examination and as it now stands.**

The RTC's assessment of usage not only has included an examination of past and present traffic statistics but has also encompassed an evaluation to determine what market potential would exist if improvements and modifications in service were made. The Committee has tried to determine if constructive changes would convert potential users to actual users to give a level of traffic which justifies public subsidy. The market possibilities for a service are evaluated from material submitted by applicants or interveners, through studies undertaken by the Committee itself as well as other information on hand. This exercise obviously is interdependent with the Committee's deliberations on whether or not the service is uneconomic and with exploration of ways to cut a service's losses.

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* Decision, November 20, 1972 - Application of CP to discontinue passenger-train services between: Québec City and Montréal; Montréal and Ottawa (North Shore); Toronto and Hamilton

- Application of CN to discontinue passenger-train services between: Québec City and Montréal; Montréal — Sherbrooke and Coaticook; Montréal/Brockville and Toronto; Montréal and Ottawa; Ottawa and Brockville; Ottawa and Toronto (via Napanee); Kingston and Toronto; Toronto and Niagara Falls; Toronto — London and Sarnia; Toronto and Stratford; Toronto and Windsor

- Application of Toronto, Hamilton and Buffalo Railway Company to discontinue passenger-train service between Hamilton and Welland

- Application of Penn Central Transportation Company to discontinue passenger-train service between Welland and Fort Erie, p. 17.

** Report, February 18, 1971 - Application of CN to discontinue passenger-train service between Richmond, Lyster and Québec City, p. 26.

A good example of the process just described is found in the RTC's two decisions delivered in 1971 on passenger-train service between Calgary and Edmonton.* After an examination of the total passenger-transport market in this corridor, it was decided that there was a role for the passenger train to play. It was found that only a small portion of traffic on CN's service consisted of through passengers between the two major centres. Thus, once it was decided that CP's service offered the best opportunity for an improved service, that segment of CN's service which connected Calgary and Edmonton was ordered discontinued to eliminate duplication. The Committee foresaw the possibility of improving the economics of CP's service by increasing its small share of the corridor market through fare experiments, reduced running times and improved on-board amenities. It was held that travel time could be reduced by limiting intermediate stops to two since the local stations provided few customers. CP was also ordered to expand the service to a train leaving each center simultaneously once in the morning and once again in the evening five days a week. On Saturdays and Sundays there was to be one train in each direction. The Committee stated:

> In this Decision, the Committee has stated its belief that even though the service is uneconomic much can be done to improve it both from the standpoint of the railway and the travelling public. It cannot be overlooked by the Committee, however, that such improvement will in large part depend upon the response of the public to the new service and particular attention will be paid to this aspect.**

Again, with respect to usage, the Committee warned that if the public did not respond by using the service serious consideration would be given to discontinuance at a future reconsideration.

2.3.1.2 Consideration of Items (a) to (d) Subsection 260(6) of the Railway Act

The above discussion of the RTC's general approach offers a background for the following comments, regarding subsection 260(6).

a) Item (a): Consideration of Actual Losses

Item (a) requires the RTC to take losses into consideration as part of the public interest when making the discontinuance decision. The Committee'sposition on this point is embodied in its general approach, i.e., the level of usage must be reasonable in order to justify the continuation of the service and the subsequent losses. In its 1971 decision, concerning CP's Toronto — Havelock service and CN's Toronto — Markham service, the Committee stated:

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* Decision, May 31, 1971 - Application of CN to discontinue passenger-train service between the points Edmonton — Camrose — Calgary/ Drumheller.

Decision, May 31, 1971 - Application of CP to discontinue passenger-train service between the terminal points Calgary and Edmonton.

** Decision, 1971 - CP: Calgary — Edmonton, p. 12.

The readily identifiable cost to the public and the railways of operating uneconomic passenger-train services provides the Committee with a yardstick with which to measure the public commitment of money against the established need of the communities served by these two trains in whatever form they may continue to operate in the future.*

b) Item (b): Consideration of Alternative Transportation Services

Next, item (b) requires an examination of the alternative transport services available to the users of the service under consideration. For each community served by the train, this involves determining what type of highways serve it, if any, and, if there are any bus, air or other rail services, what is their frequency, schedule and quality. The purpose of this exercise is to establish to what degree each community is isolated from the outside world. This is done in order to ensure that each community would be left with an adequate passenger-transport system if the train were discontinued. In situations where the number of people using the train is low but where the discontinuance of the service would isolate communities to a degree which, in the opinion of the Committee, is intolerable, the RTC will make an exception to its criterion of usage and order the service be continued.

The 1972 Mid-Canada Decision was a case of particular interest in this regard because it was an early decision dealing with most of the isolated services in Canada.

The RTC approached the problem by dividing the services into three categories as follows:

> Category One:
> Passenger-train services or parts thereof which principally serve on-line centres inaccessible by alternative modes of transportation, especially highways.
>
> Category Two:
> Passenger-train services or parts thereof operating through areas which did not always have supplementary roads or highways running parallel to the rail service, but which usually do have communities accessible by alternative modes of transport. These services often link Category One services to larger urban areas.

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* Decision, May 31, 1971 - Application by CP to discontinue passenger-train service between the terminal points Toronto and Havelock

- Application by CN to discontinue passenger-train service between the terminal points Toronto and Markham, p. 28.

> Category Three:
> Passenger-train services which, generally speaking, have adequate alternative transportation facilities, but which arbitrarily supplement Category One and Category Two services in the traffic or operating sense.*

The Committee then went on to set out the following solution:

> The Committee has considered each of these three categories of services separately in exercising its responsibilities under section 260(6). In so doing, it concludes that:
>
> (1) Services in Category One should continue to operate until either suitable alternative transportation services are available, or as long as a demand for the present service exists;
> (2) Services in Category Two should also continue to operate, at least as long as they are necessary to play their role in linking Category One services to the larger urban centres, or in providing service from and to their own on-line communities which do not all have adequate alternative transportation services. The Committee is of the opinion, however, that Category Two services should be the subject of experimentation aimed at reducing any duplication and minimizing losses; and
> (3) Services in Category Three should also continue to operate as long as the traffic and operating relationship which they have with other services continues to exist; they too should be the subject of experimentation on the part of the railway companies involved.**

This decision also contained a reminder to the railway company that a declaration of a service being uneconomic was not to be interpreted as a statement meaning that nothing further should be done to improve the service and cut losses.

Analysis of the decisions also produced some observations with respect to the Committee's approach to judging the adequacy of bus service as an alternative to rail travel. The following viewpoint was enunciated in the 1976 report and order on the service linking Jasper, Prince George and Prince Rupert:

> ...While the bus schedule does provide more frequent service and lower fares for short trips, it has certain disadvantages in comparison with rail in terms of on-board comfort and convenience, - particularly for trips of longer duration.***

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* Decision, 1972 - CN and Nipissing Central Railway Company: Québec, Chicoutimi, etc., pp. 19-20.

** Ibid., p. 20.

*** Report, September 3, 1976 - Application of CN to discontinue passenger-train service between Jasper — Prince George — Prince Rupert, p. 18.

This was reiterated in the 1977 decision on the Toronto, North Bay and Kapuskasing service.* This position, however, was not a prime factor in the discontinuance decision. Rather, the level of usage and degree of isolation, as already indicated, were the key determinants. In both decisions the train was retained, in the former case because of the number of isolated communities involved and in the latter because of the level of patronage offered. In those situations, where patronage is low and isolation is not a consideration, a bus service is usually accepted as being a sufficient alternative for shorter distances. This is especially true in the period subsequent to the Minister's policy and directive.

One case in which the approach outlined above was not followed was the 1968 decision on the Saint John's — Port-aux-Basques passenger-train service in Newfoundland.** CN applied to discontinue this service and proposed to operate a bus service in its place. The level of train usage was what would be considered reasonable in comparison with other cases cited, but in this case, the Committee approved the discontinuance of the train and the introduction of the bus service. This exception to the general approach can be explained by the unique circumstances of the case.

The railway stated that a considerable amount of work would be required to raise the quality of service to an acceptable level. In order to achieve reasonable travel times through faster speeds, a programme of grade reduction and curve elimination would have been necessary. The Newfoundland railway was built to narrow gauge standards and this, combined with the poor track alignment, meant that the equipment was of smaller dimensions than that used elsewhere in Canada. The cost of conversion to standard gauge, grade reduction and track realignment or, for that matter, the cost of the latter two alone, was considered prohibitive. Therefore, it was the opinion of the Committee that:

> The institution of highways bus service would, in our opinion, reduce this loss by a considerable amount, while at the same time providing more convenient, faster schedules for the travelling public, and perhaps providing the Railway with a means of regaining the patronage it has lost over the past years.***

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* Decision, September 7, 1977 - Application of CN to discontinue passenger-train service between Toronto — North Bay — Kapuskasing.

** Decision, July 3, 1968 - Application of CN to discontinue passenger-train service between St. John's and Port-aux-Basques, Nfld. and substituting, therefore a bus operation.

*** Ibid., pp. 15-16.

c) Item (c): Consideration of Effect of Withdrawal of Service on Other Passenger-Train Services or Other Passenger Carriers

The RTC, by way of item (c) of section 260(6), must also assess the impact that the withdrawal of the service would have on the available alternatives. This usually involves determining if the other transport systems would have sufficient capacity and quality of service to satisfy the needs of the train passengers. For example, in a 1970 decision the Committee commented on the adverse impact of a discontinuance of service between Toronto and Guelph:

> b) The problems involved in transporting the more than 400 passengers using this service daily, for all or part of its route, by alternative means of public transportation are serious and complex in this congested area of the Ontario transportation system.*

The RTC also took note the potential harmful effect of discontinuance in the 1971 Decision on services between Toronto and Havelock and Toronto and Markham:

> We were told by many witnesses of the congestion on the road network in and around Toronto and of the savings in expressway costs and in automobile or bus-riders' time at rush hours that could be achieved by switching traffic from road to rail, and were warned of the consequences of doing the opposite.
>
> In a large city like Toronto, there is no doubt that a passenger train, when the railway is already there, can transport substantial numbers of people faster and, for them, just as economically as can automobiles or buses. And, when a passenger train is performing this function, there is equally no doubt that the pressure on streets, roads and expressways is significantly relieved.**

The RTC did not overlook the interdependence of various services and the impact one can have upon another. For instance, in the Mid-Canada Decision cited previously, recognition was made of the interdependence of the various categories in not ordering discontinuances. A further example was the 1972

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* Decision, September 30, 1970 - Application by CN to discontinue passenger-train services between: Toronto and Palmerston; Palmerston and Owen Sound; Palmerston and Southampton; Stratford and Kincardine; Stratford and Goderich

- Application by CN to discontinue passenger-train service between Toronto and Guelph

- Application by CP to discontinue passenger-train service between Toronto and Owen Sound, p. 52.

** Decision, 1971 - CP and CN: Toronto, Markham etc., p. 27.

Corridor Decision. Near the end of the decision the following statement was made:

> It is the intention of the Committee to invite the public to express its opinions concerning the passenger-train services in the Corridor area and to suggest ways in which they can be improved and made more economic. Because of the interdependency between the Corridor services and those just mentioned spanning the country between the Atlantic and Pacific the Committee is also of the opinion that no final determination considering discontinuance of any of the services under consideration in this Decision should be made until the views of the public regarding the transcontinental services have been fully assessed in so far as they may affect or assist in improving the services in the Corridor.* [emphasis added]

d) Item (d): Consideration of Future Passenger Transportation Needs of the Area

The fourth aspect which the RTC must consider, by virtue of subsection 260(6), pertains to the future transport needs of the area concerned and the assessment of what impact, if any, these factors would have on passenger demand in the future. Potential traffic increases are of obvious importance to the Committee when it must decide if future levels of use will justify the cost of the service to the public.

Future population growth was a positive consideration in the 1971 Decision on the services running between Toronto and Havelock and Toronto and Markham:

> We were impressed with the evidence of rapid expansion in Scarborough, the Malvern development and other developments, all of which will mean greater suburban population by quite large orders of magnitude in the foreseeable future, implying obviously a corresponding demand for a fast, reliable and economical means of transporting people in large numbers between Toronto and places along the line.**

Similarly, with respect to future needs, the Committee is also interested in those cases where there are no, or limited alternatives to rail service to determine whether in the future these circumstances will remain unchanged.

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* Decision, 1972 - CP, CN, Toronto, Hamilton and Buffalo and Penn Central: Québec City, Montréal etc., p. 15.

** Decision, 1971 - CN and CP: Toronto, Markham, etc., p. 27.

The examination of future transport requirements has also included a review of the energy situation and its implications for passenger trains. Since the start of the escalation in the price of crude oil in 1973, there has been a gradual realization that oil supplies were finite, non-renewable and not to be wasted. This realization also brought the recognition by some that the role of the train in the passenger-transport market could change. The exact nature and extent of the change, however, was not known then as it is not fully understood even today. The potential for renewed demand for passenger services due to a shift in the pattern of energy consumption has had an effect on the Committee's deliberations. In a decision issued in December 1973, the Committee ordered several lightly patronized services, which generally were faced by competing alternatives, not to be discontinued. This was done because of the uncertainty created by the energy situation. The Committee stated:

> Many of the services under consideration in this Decision carry relatively few people, and, in all cases, these services operate at a level well below their capacity. This is primarily because of the marked preference of the travelling public for the private automobile, and also because, in most instances, alternative means of public transport are available. But in considering the future transportation needs of the areas affected at this time, the Committee must take into account the probability of future changes in established travel patterns in Canada because of the looming energy crisis, and must see how change affects the demand for the services under review in this Decision, before considering the discontinuance of any of them. The Committee determines that these services should not be discontinued.*

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* Decision, December 14, 1973 - Applications of CN to discontinue passenger-train services between: Québec — La Malbaie and Clermont; Richmond — Lyster and Québec and between Deux-Montagnes and Grenville

- Applications of CN to discontinue passenger-train services between: Saskatoon and The Pas; Prince Albert and Hudson Bay and between Regina — Saskatoon and Prince Albert

- Application of CN to discontinue passenger-train service between Edmonton and North Battleford

- Application of CP to discontinue passenger-train service between Montréal and Mont-Laurier

- Application of CP to discontinue passenger-train service between Sudbury and Sault Sainte Marie, p. 8.

The 1976 decisions on "The Canadian" and the "Super Continental" presented a history of the efforts that had been made since 1970 towards rationalizing the transcontinental services.* There was also a description of the effect of the energy outlook on the rationalization process:

> Toward the end of 1973, however, the progress of rationalization was effected by an atmosphere of uncertainty created by the looming energy crisis. The Committee recognized that any proposed changes to the existing transportation system would have to be re-evaluated in light of the potential impact of the energy crisis on established traffic patterns and the future demand for transportation services.**

A good discussion of the Committee's thoughts on energy and its bearing on the demand and supply of rail-passenger services is found in the Preferred Plan for Western Transcontinental Passenger Train Service:

> We cannot foretell what the oil supply situation might be in five, ten or twenty years, nor what the price of fuel is likely to be in the future. We are certainly aware that the price of gasoline and other fuels have increased substantially since 1973 and there is every likelihood that prices will continue to increase in the future, although we cannot predict at what rate this increase will occur. This will likely have the greatest impact on travel by automobile, which is currently the dominant mode against which all forms of public transport must compete. Recent efforts at energy conservation, such as the lowering of highway speed limits, may similarly result in some diminution of automobile travel, although we have no way of knowing by what amount nor at what rate automobile usage will be affected.
>
> Railway passenger service can be a very fuel efficient way of moving passengers, requiring relatively litle energy per passenger mile, particularly if the trains have high load factors and consist of light-weight equipment. In the context of transcontinental services, the amounts of fuel used are relatively small by comparison with the nation's total energy consumption in transportation. Most energy in transport is used in urban transportation. Short, intercity trips account for the second largest use of energy. The longer trans-continental journeys by all modes account for a much smaller proportion of energy consumption than the other two.
>
> However, because of the increasing concern and uncertainty over future supply and requirement for energy, the rail option is an important one to be retained. The transcontinental services, as

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* Decision, January 29, 1976 - Application of CP to discontinue passenger-train service: Montréal/Toronto —— Vancouver, "The Canadian."

Decision, February 26, 1976 - Application of CN to discontinue passenger-train service between Montréal/Toronto —— Winnipeg —— Saskatoon —— Edmonton —— Jasper —— Vancouver, the "Super Continental."

** Decision, 1976 - CP: "The Canadian", p. 5.

Decision, 1976 - CN: the "Super Continental", p. 4.

> presently operated, are not as fuel efficient as they should be, because they suffer the twin penalties of relatively low seating density and heavy equipment. Low seating density is due to the large amounts of lounge and dining space on these trains and to the smaller seating capacity of present-day sleeping cars relative to coaches. Furthermore, the transcontinental services are characterized by very marked peaking of demand with the summer load factors considerably in excess of those in the slack winter season. This low demand in the off-peak season further aggravates the fuel efficiency problem for these trains.
>
> We recognize all of these problems, but we are persuaded that the uncertain future regarding energy means that transcontinental passenger-train service will be more important in the future than it is at present. The Preferred Plan aims at overcoming the more serious deficiencies mentioned, to arrive at a more efficient operation.*

The Committee, in a 1978 decision on service to the Saguenay — Lac-Saint-Jean region, again made reference to energy under its review of future transport needs:

> Testimony given at the hearings indicated a strong belief that the Saguenay — Lac-Saint-Jean area would experience a population increase which, along with the increased cost of automobile ownership and the energy problem, would increase the demand for public passenger services.**

Finally, in a recent report and order on the service running between Halifax and Yarmouth, Nova Scotia, the following statement was made with respect to future transport needs:

> Testimony given at the hearings indicated that the Halifax — Yarmouth route would continue to require adequate public transportation, particularly if the use of the private automobile were to be curtailed substantially in future due to fuel shortages.***

Later, in the same report, VIA Rail was instructed to consult with the various interested parties to establish a future role for the service. Energy was amongst the subjects to be considered:

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* RTC, Preferred Plan for Western Transcontinental Passenger Train Service, p. 36.

** Decision, December 29, 1978, Re-examination of CN's passenger-train services between: Montréal and Chicoutimi; Québec (Ste. Foy) and Chicoutimi; Chambord and Dolbeau; and Québec (Limoilou) and Rivière-à-Pierre to determine whether they should be maintained or discontinued, p. 14.

*** Report, September 19, 1979 - Application of CP on behalf of Dominion Atlantic Railway to discontinue passenger-train service between Halifax, Kentville and Yarmouth, p. 31.

(ii) Energy:

The groups should look into the possibility that public transportation will be called upon to carry a much higher proportion of Halifax — Yarmouth traffic, due to ever-increasing gasoline prices and the possibility of a fuel shortage. The provincial government in particular should attempt to anticipate the role that an improved train service would play.*

2.3.1.3 Other Considerations

a) Effect on Employment

Another matter, which has concerned the RTC in its deliberations but which does not appear to have been a deciding factor in any decision, was the future of railway employees displaced by either adjustments or discontinuances of passenger services. The approach of the Committee to this issue was put forth in An Interim Report on the Rationalization of Montréal/Toronto — Vancouver Passenger-Train Services, issued in 1971:

> One consequence of the rationalization of passenger-train services which the Commission recognizes to be of prime concern is the effect on employment of those railway employees now engaged in passenger operations.
>
> In its decision of January 29 on "The Canadian" the Commission expressed concern about "alternative employment for the staff of sleeping cars" and indicated that this should be a consideration in timing any reduction of sleeping car services.
>
> In carrying out any plan for reorganizing or reducing passenger-train services generally, the Commission has the same concern for the job security of all employees of the railways who are engaged in providing passenger services.
>
> The terms and conditions of job security are, of course, matters that can be resolved only within established collective bargaining procedures which are entirely beyond the Commission's jurisdiction. In this context the Commission would like to assure the railway and their employees that, as far as the law permits, it is ready to recognize as consequential to the rationalization of passenger services any legitimate costs of maintaining and improving job security of present employees.
>
> Since passenger-train services which are ordered by the Commission to be continued are eligible for subsidy of up to 80 per cent of losses, any additional cost to the railways of providing for employees affected would be correspondingly reduced. The Commission believes that the process of rationalization can be made more humane if the railways will rely on attrition or work out some other form of job security for the labour forces which will be affected. Such an approach should result in speedier and smoother progress in attaining

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* Ibid., p. 37.

the real objective of providing an economic, efficient and adequate network of passenger-train service wherever the volume of traffic is sufficient to justify continued service.*

b) Public Expenditure on Other Modes of Transport

An issue which often arises in hearings and which falls within the subject area of passenger-train economics is the amount of public funds used to support air and road passenger transport. Many times interveners have pointed to air and road subsidies as a justification for the continuation and subsidization of various passenger trains. The RTC in its 1971 decision on CP's plan of rationalization for its transcontinental train, "The Canadian", said:

> In accepting the view that "The Canadian" should continue to operate under subsidy at its present frequency for some period during which the whole problem of transcontinental passenger transport can be more fully studied, we have taken note of arguments made by a number of witnesses that competitive passenger services by air and road are subsidized either by the federal or provincial governments.**

A little later in the same decision, the Committee announced that its aim was to develop a basic transcontinental passenger system whose cost to the public would be justified by the number of people carried. The RTC stated that this task encompassed two points of view. One was the need to ensure the availability of essential transcontinental services at a reasonable cost. The other was:

> ...to do what we can to promote the development of a passenger service in which each mode of transport, so far as practicable, bears a fair proportion of the real cost of the resources, facilities and services provided that mode of transport at public expense. We recognize that there is a jurisdictional problem in doing so, because the federal authorities cannot dictate highway policy to the provincial authorities, while the Government of Canada and its agencies, being answerable to the Parliament and Canada, must take their own responsibilities for recommending payments to the railways or providing facilities to air carriers out of the treasury of Canada.***

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* RTC, An Interim Report on the Rationalization of Montréal/Toronto — Vancouver Passenger-Train Services, pp. 3-4.

** Decision, January 29, 1971 - Application by CP to discontinue passenger-train service between Montréal — Toronto — Vancouver, p. 15.

*** Ibid., p. 17.

The responsibility to make certain that each mode bears a fair proportion of the cost of the resources provided to it at public expense is assigned to the Committee by subsection 3(b) of the NTA. At the same time, the Committee must, by way of subsection 3(c) of the NTA, also ensure that each mode receives compensation as far as practicable for any public duty imposed upon it.

The RTC further discussed public expenditures made on each of the modes in the Preferred Plan for Western Transcontinental Passenger Train Service. It summarizes the section on public expenditures by saying:

> The above figures reveal that large amounts of money are spent on the other modes in Canada each year. Offsetting this, however, is the fact that relatively large numbers of people utilize the airports and highways, and on a proportionate basis the relative expenditure by governments per user is lower for air and road than for rail.*

c) Improvements to Services

i) Improvement of services after an order not to discontinue is issued

A finding by the RTC that a service is uneconomic coupled with an order not to discontinue service is not, however, an indication by the RTC that nothing more can be done in the way of improvements and changes to cut losses. The Committee has pointed out in decisions that further efforts can be made to reduce losses and many times it has ordered or suggested improvements and changes that could be made to a service. The Committee's approach is illustrated by the following quotations from its decisions. After finding CN's Toronto — Guelph service uneconomic in a 1970 decision, the Committee went on to say:

> In considering whether this service should be discontinued, and having regard to Section 314I(6) (old, now 260(6)) of The Railway Act, the Committee makes these findings:
> a) None of the evidence convinces us that the actual losses incurred could not be substantially reduced by changes in equipment assignment, and by providing more convenient and more suitable service based on surveys using modern methods, of the requirements of passengers, both actual and potential.
> Canadian National must make the effort to co-ordinate and harmonize the operation of this passenger-train service with those of public transportation by highway, particularly in the Metropolitan Toronto area where both actual and potential patronage are greatest.**

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* RTC, Preferred Plan for Western Transcontinental Passenger Train Service, p. 34.

** Decision, 1970 - CN and CP: Toronto, Palmerston, etc., pp. 51-52.

Another example is found in the Committee's 1972 Decision on applications to discontinue various Mid-Canada services grouped under the heading of Mid-Canada:

> This determination, however, should not be construed in such a way as to imply that it discourages further adjustments in operating practices, equipment assignment, scheduling, pricing, or other aspects of passenger service which are in fact under railway control. On the contrary, the Committee encourages further experimentation in the hope of progressively getting closer to what has been called in the preamble to the National Transportation Act "an economic, efficient and adequate transportation system making the best use of all available modes of transportation at the lowest total cost."*

A third illustration comes from the 1978 decision on the service linking Québec City and Cochrane, Ontario:

> With revenue covering only 10.9% of the cost of operation and a ridership level of about 150% of capacity needed to break even, the Committee sees the service as incapable of being rendered profitable under the present conditions. Losses may be cut, however, through alterations in operating practices, equipment assignment, scheduling, pricing or other aspects of passenger service under VIA's or CN's control.**

ii) Provision of sleeping car, parlour car and meal services

Another aspect of passenger-train economics that particularly concerned the RTC in its early transcontinental decisions was the losses incurred in the provision of sleeping car, parlour car and meal services. The first indication of this came in the Committee's 1970 Decision on CP's application to discontinue "The Canadian":

> These calculations indicate that one of the principal reasons for the total short-fall in revenue in relation to the cost of operating "The Canadian" is that revenue from the carrying of sleeping and parlour car passengers and from the serving of meals fails to meet the cost of providing these services. If this short-fall is to be minimized, action must be taken to ensure the maximum revenue from sleeping and dining car service at the lowest cost.***

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* Decision, 1972 - CN and Nipissing Central Railway Company: Québec, Chicoutimi, etc., p. 14.

** Decision, December 29, 1978, Re-examination of CN passenger-train services in order to determine whether they should be maintained or discontinued between Québec (Sainte-Foy) and Cochrane and between Senneterre and Noranda, Québec, p. 10.

*** Decision, 1970 - CP: "The Canadian", p. 10.

The RTC reiterated this concern again in its 1971 Decision on CP's plans to rationalize "The Canadian":

> ...Whatever argument there may be, in the public interest, for subsidizing basic coach transportation, we cannot agree that it is in the public interest to provide travellers with beds, meals and luxury services at the expense of the Canadian taxpayer.*

The Committee went on to state what should be done if the losses did not disappear:

> We believe, therefore, that any plan of rationalization of "The Canadian" or any other passenger train should provide for the elimination of losses on these services, or if that is not feasible, the elimination of such services within a reasonable period of time.
>
> Canadian Pacific in evidence given at Regina expressed the view that a method could be devised of providing adequate meal service at a break even level. In order to give the railways (not merely Canadian Pacific) an incentive to achieve this goal, we will consider disallowing any losses from meal service in recommending subsidy payments after a year or so, though we are not prepared to make an order at this time applying only to one passenger-train service. We believe that with ingenuity and initiative the railways can provide adequate meal service without cost to the taxpayer or loss to themselves.
>
> The present losses on sleeping cars are much higher than the losses on meals and the proportion of the travelling public which uses sleeping car service is even smaller. We have already said we do not feel that, in the long term, there is any valid basis for supporting the subsidization of sleeping car passengers by the taxpayers through the treasury of Canada. Nor does it appear to us that there would be any justification for asking the railways to absorb the loss on sleeping car operations. Unless the out-of-pocket costs of operating sleeping cars can be recovered from the users by direct charges, we feel that consideration will have to be given to phasing out sleeping car service. Before such a decision is made, however, we would like to see some experimentation by the railways, in concert, to find out whether some means can be found to provide limited sleeping car accommodation at a price which passengers would be willing to pay and which would, in fact, cover the cost of providing the service. Because it would take longer to conduct these experiments and because alternative employment for the staff of sleeping cars might be harder to find than for the staff of dining cars, we feel a somewhat later date should be set after which losses on sleeping cars would no longer be included for purposes of subsidy.**

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* Decision, 1971 - CP: Montréal — Toronto — Vancouver, p. 9.

** Decision, 1971 - CP: Montréal — Toronto — Vancouver, pp. 10-11.

The position of the RTC on the provision of the meal and sleeping service had undergone a change by the time it issued its Preferred Plan for Western Transcontinental Passenger Train Service in 1977, it said that these services were now essential:

> Meal and sleeping services on western transcontinental trains should be regarded as essential parts of the level of amenities necessary to attract and serve the long distance traveller. We repeat our finding that the present transcontinental market is predominantly long-haul, primarily because the larger cities on the routes that are served by the trains are quite far apart from each other. We are convinced that it will be nearly impossible now, and for some considerable time into the future, to change the present transcontinental, long-distance market into one that is dominated by the short-distance passenger. For as long as this market situation prevails, it is our belief that removal of essential services from the train would have the immediate effect of driving away passengers.*

The Committee then went on to explain why there was no real conflict between this policy and paragraph (g) of Part (5) of the Minister's directive which enunciated the principle that:

> (g) provision of additional service standards and amenities over and above basic coach class requirements should be fully at the expense of the user.

The explanation reads as follows:

> Paragraph (g) read alone carries with it the clear message that the pricing of amenities over and above basic coach class transportation must be such as to recover the full costs of those amenities. However, paragraph (d) states that the capacity should match the traffic, and the transcontinental trains carry mainly long-distance travellers. Hence, paragraph (g) appears to be less an imperative call to duty, and more an objective to be achieved as far as good business and common sense permit.
>
> To price sleeping and meal services at full cost would mean putting them at a level that for all practical purposes would be beyond the reach of most travellers. The inevitable result would be the removal of these services, which would eliminate the long-haul market, and, in the absence of a short-haul market, would be tantamount to killing the market for the transcontinental service. Since this result would be contrary to the basic thrust of the Directive, which calls for maintenance of a single service network across Canada on a sound economic footing, we believe that the provision of meal and sleeping services at reasonable prices is an integral part of the transcontinental train.**

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* RTC, Preferred Plan for Western Transcontinental Passenger Train service, p. 39.

** Ibid., p. 40.

The Committee, however, did not forsake its efforts to see the economics of these services improved. This can be seen in the recommendations of the Preferred Plan for Western Transcontinental Passenger Train Service:

> That part of this refurbishment program include the re-design of a more economical higher-density type of sleeping car, with at least one such car operating in every consist of the transcontinental trains.*

2.3.2 The Committee's Approach Viewed over Time

2.3.2.1 The Period 1967 to 1976

The preceding text provided a general understanding of the discontinuance process. It is now possible to proceed with a discussion of what changes have occurred in this process over time. For the purposes of this discussion, the years 1967-1979 will be subdivided into two periods using 1976 as a dividing point as that was the year in which the Minister of Transport's policy statement and directive were issued.

The years leading up to 1976 saw the RTC develop and follow the general approach outlined in the previous section. The Committee established early in its work that an uneconomic passenger train was one incapable of being rendered profitable through changes to any or all of the aspects of the service which were within railway control. It was also careful to point out that, when a service was declared uneconomic, it did not mean that no effort should be made to improve the service and cut losses. It also was established that a reasonable level of usage was the main criterion for the retention of a service, except in the case of isolated communities which did not enjoy alternative modes of transport. In this case, usage was not the determining factor and the passenger trains generally were not discontinued.

Other observations, with respect to the pre-1976 period, pertain to how the RTC made use of the regulatory machinery at its disposal. In several instances a number of applications for discontinuance were grouped together into one decision. A large proportion of the applications decided prior to 1976 were handled in this manner. The Committee chose to do this where a number of services exhibited a degree of interdependence or shared a common attribute, such as isolation. The three decisions issued in 1972 on the Maritime services, the Corridor services and the Mid-Canada services, fell into this category.* Another decision of this type was issued in late 1973 on a number of services operating in the Prairie Provinces, Ontario and Québec.** Many of the services were poorly patronized and faced with competitive alternatives but they were all ordered continued because of the uncertain energy future and its potential impact on the passenger train.

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* *Ibid*., p. 60.

A further observation has to do with the rationalization of services outside of the normal discontinuance decisions and the involvement of interested parties. The first instance of this was the 1970 hearings on CP's plan to rationalize "The Canadian". The decision that followed noted that the two transcontinental services could not be rationalized in isolation of each other. Subsequently, a call for submissions from interested parties was issued to solicit their views on how to rationalize "The Canadian" and "Super Continental". One outcome of this was a report entitled, An Interim Report by the Railway Transport Committee on the Rationalization of Montréal/Toronto-Vancouver Passenger-Train Services.*** It was suggested, among other things, that the two railways share certain facilities and services such as ticketing and reservations, common fare structure, terminals and related facilities and equipment. The Committee, as part of its continuing efforts to improve services and cut losses suggested that these improvements also be made in the Maritimes and the Corridor.****

Calls for submissions also were issued for the Maritime, Corridor and Mid-Canada services. Again, the views of interested parties on ways to rationalize the services were requested. Events such as the energy crisis, the transportation policy review of 1975 and the Minister's policy statement and directive of 1976 overtook this work and no reports were issued. It is thus seen that in the years leading up to 1976, the RTC followed its general approach in order to achieve an economic, efficient and adequate passenger transportation system. The number of discontinuances as a proportion of total applications in these years was not large. Obvious services, which suffered from low patronage, where an adequate alternative was available and little potential was foreseen, were discontinued. The majority of applications were grouped according to interdependencies or common attributes and handled in single decisions. The Committee, in addition to encouraging the railways to find ways to improve services and cut losses, attempted to recognize the market potential of services as it did in the Calgary — Edmonton decisions.* It obtained the views of interested parties on improvements to services and made suggestions on how CN and CP in certain instances could share facilities or eliminate duplication. The approach based on usage and isolation was followed throughout, but the process of improvement and rationalization was an evolving and on-going one.

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* Decision, February 4, 1972 - Application of CP to discontinue passenger-train service between Saint John and Montréal

- Application of CP (on behalf of Dominion Atlantic Railway Company) to discontinue passenger-train service between Halifax — Kentville — Digby and Yarmouth

- Application of CN to discontinue passenger-train services between: Montréal — Gaspé — Campbellton — Edmundston — Moncton and Halifax; Truro — Sydney and Halifax; Moncton and Saint John; Charny and Québec City.

Decision, 1972 - CP, CN, Toronto, Hamilton and Buffalo and Penn Central: Québec City, Montréal, etc.

Decision, 1972 - CN and Nipissing Central Railway Company: Québec, Chicoutimi, etc.

** Decision, 1973 - CN and CP: Québec — La Malbaie, etc.

*** RTC, An Interim Report by the Railway Transport Committee on the Rationalization of Montréal/Toronto-Vancouver Passenger-Train Services.

**** Decision, 1972 - CP and CN: Saint John, Montréal, etc.

Decision, 1972 - CP, CN, Toronto, Hamilton and Buffalo and Penn Central: Québec City, Montréal, etc.

2.3.2.2 The Period from 1976 to 1980

The year 1976 saw the issuance of the Minister's Directive for the Guidance of the Canadian Transport Commission on Rail Passenger Services. The position of the RTC with respect to the directive was expressed in its Preferred Plan for Western Transcontinental Passenger Train Service. Subsection 260(6) of the Railway Act that sets out the four areas that should be considered, among others, in the public interest was first quoted, and then followed by this statement:

> Before the 1976 hearings began, we gave the Directive of the Government of Canada very careful consideration in the light of our powers and duties as outlined above. At the opening of every hearing in each of the 14 cities we visited, we reminded all interested parties of the Directive in designing their submissions to us. We told them that we could not find anything in it depriving us of any of our powers in the Railway Act. Each time, we said that "...the Directive, as we see it, is a very helpful statement of the intentions of the Government of Canada with respect to rail passenger services, and is one element of the 'public interest' as that expression is employed in subsection 6 of Section 260 of the Railway Act."

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* Decision, May 31, 1971 - Application of CP to discontinue passenger-train service between the terminal points Calgary and Edmonton.

Decision, May 31, 1976 - Application of CP to discontinue passenger-train service between Calgary and South Edmonton.

Not everyone who spoke at the hearings mentioned the Directive, as we have said, but most of those who did were critical of it as being a possible interference with the Commission's process of making decisions. A few went so far as to suggest that we ignore the Directive. We have reconsidered our stated position on the Directive, and after taking into account the arguments against it, we reaffirm what we said at the hearings concerning the Directive.*

The Directive states that:

> 5. The objective should be to seek the best method of satisfying passenger requirements regardless of mode [emphasis added] and in particular, to be guided by the following specific principles...**

This objective also appears to have been in the RTC's thoughts when, subsequent to the Directive, it found that many of the services which it had continued in the 1972 Mid-Canada Decision*** and the December 1973**** Decision on select services in the Prairies, Ontario and Québec, were no longer necessary. It seems that, on reconsideration, the RTC found that the alternatives to these services were satisfactory in the light of the needs of the areas served and the services' low levels of present and potential patronage.

In a number of instances it was necessary for the RTC to issue a decision before it had completed its review of the service as required by the Directive. This occurred because of the requirement of subsection 260(8) of the Railway Act***** that all applications be reconsidered within a five year period of either the date of original application or the last consideration thereof, as the case may be. In all these situations, the determination was made that the service was still uneconomic and would continue to be. It was then ordered that the services be continued until hearings were held and a review completed.

Part of the task set out by the Directive included the development of a basic network that linked the Pacific and Atlantic coasts and Central Canada and at the same time avoided duplication where possible. The effect of the

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* RTC, Preferred Plan for Western Transcontinental Passenger Train Service, p. 5.

** Transport Canada, Directive for the Guidance of the Canadian Transport Commision on Rail Passenger Services, p. 2.

*** Decision, 1972 - CN and Nipissing Central Railway Company: Québec, Chicoutimi, etc.

**** Decision, 1973 - CN and CP: Québec — La Malbaie and Clermont, etc.

***** Railway Act, (1970), subsection 260(8).

Directive plus the creation of VIA Rail Canada allowed the RTC to go further in the rationalization process than before and create a transcontinental service which integrated the service provided by CN and CP.

The rationalization of both the Western and Eastern Transcontinental services is also of interest because of the manner in which the RTC divided the regulatory process into stages to facilitate the participation of interested parties. The procedure was identical for both the western and eastern services. Hearings were first held in cities along the routes of the services and then a summary of evidence of all the viewpoints expressed was published.* The Committee then considered this material and the results of its own analysis before developing the preferred plans of the services to be offered in the future. Interested parties were invited to offer their comments on this plan. The Committee examined these, then made any changes it felt necessary before issuing the Final Plan for Western Transcontinental Passenger Train Service (October 1977) and Final Plan for Eastern Transcontinental Passenger Train Service (June 1979).

Outside of the changes brought about by the Directive, the RTC followed the same general approach as it had before 1976. Usage was the important criterion, except in the case of isolation. The Committee also continued its efforts to improve services. For example, in the two 1978 decisions** on service between Matapédia and Gaspé, the Committee decided that travelling time could be reduced through the substitution of Rail Diesel Cars for conventional equipment.

However, in an order and report on service between Halifax and Yarmouth, Nova Scotia,*** and in an order and decision on service between Prince Albert, Saskatoon and Regina, Saskatchewan,**** both issued in November 1979, it is possible to detect a change which is more a shift in emphasis than a radical departure from the past approach.

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* Canada, Canadian Transport Commission, Railway Transport Committee, Transcontinental Passenger Train Hearings, Summary of Findings, Ottawa: Canadian Transport Commission, September 1976.

RTC, Eastern Transcontinental Passenger Train Hearings, Summary of Evidence, Ottawa: Canadian Transport Commission, January 1978.

** Decision, June 28, 1979 - Application of CN to discontinue passenger-train service between Matapedia and Gaspé.

*** Report, September 19, 1979 - Application of CP (on behalf of the Dominion Atlantic Railway) to discontinue its passenger-train service between Halifax, Kentville and Yarmouth.

**** Decision, November 8, 1979 - Application of CN to discontinue passenger-train service comprising trains 680 and 683 between Regina, Saskatoon and Prince Albert.

The decision on the Nova Scotia regional service will be used for the purposes of illustration but the approach was similar in both cases.

The RTC found that there was a continuing need for public transportation between Halifax and Yarmouth and that the adequacy of alternative service was not sufficient to justify discontinuing the train. It was decided that something more than just continuing the train was necessary in order to justify the public subsidy and make the service a useful component of the regional passenger-transport system. It was further held that a new experimental approach was the best way to proceed. In the words of the RTC:

> Finally, while the suggestion is not being made that a better service could have attracted enough additional traffic in recent years to reduce the loss dramatically, it can be said that the quality and usefulness of the service should have been more commensurate with the subsidy being poured in year-after-year.
>
> There is no intention here of assessing blame for this situation. Institutional factors and policies have led to neglect on the part of the railway companies, governments and perhaps even the public itself. At this time, it is more important that a solution to the dilemma be proposed and tried out. It is not good enough to order continuance of such services at significant cost to the taxpayer unless they can be made to be useful components of their respective regional transport systems.
>
> The Experimental Concept
>
> In the present case, Halifax-Yarmouth, a new approach seems desirable. First, several modest improvements should be made to the service by VIA Rail Canada, in cooperation with Dominion Atlantic Railway. Second, an experimental period of one year should begin at such time as the improvements have been made. Third, during this experimental period, VIA Rail should inaugurate a process by which a future role for the service can be determined, in consultation with the Government of Nova Scotia, Acadian Lines, Sureline Bus Service, Transport 2000 Atlantic, the railway unions, municipalities, boards of trade and other interested parties. Fourth, at the end of the one-year period, the Committee would re-examine the service.*

The RTC placed more emphasis on improving the quality of service to ensure that the service had a reasonable opportunity to demonstrate its potential in the passenger-transport market. This is evident from the discussion of improvements, which covered schedules, stations, equipment, fares and promotion. The discussion was in fact more extensive and broader in scope than had been usual in the past for decisions on regional services.

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* Decision, 1979 - CP: Halifax, Kentville and Yarmouth, p. 33.

In addition to improvements and the one-year experiment, the Committee ordered that a group of the interested parties be formed to consider the future role of the service. It was suggested that, among other things, the group should consider the following issues: intermodal co-ordination, energy, recreational service, commuter service and financing. On the subject of financing, the RTC introduced for the first time the possibility of other levels of government providing assistance. It stated:

> (v) Financing:
>
> For services of a regional nature such as Halifax-Yarmouth, the concept of involving provincial and local authorities and organizations should be considered. This involvement could be patterned on the American procedure, whereby a state government plans a passenger-train service according to its own priorities and requirements and contracts with Amtrak to provide the service, the cost being paid partly by Amtrak and partly by the state government. In return for - in the scale of overall transport spending - a relatively modest amount of money, the state government is able to determine the role of such regional passenger-train services and, to a large extent, the operational details. The advantage of the approach to the federal government is that, through its agency, Amtrak, it is able to provide a service more attuned to local needs and reduce its financial commitment, all the time retaining a federal presence in the state concerned.
>
> It seems likely that this approach could be adapted for use in Canada. The federal government, through VIA Rail, could reduce its annual subsidy to rail passenger service while maintaining a more meaningful presence throughout the country. A province could demonstrate its faith in the future of rail passenger service by making a financial commitment, in return, of course, for an effective say in the operation of the service.
>
> Specifically with respect to station rehabilitation, VIA Rail, Dominion Atlantic Railway, the province and local municipalities may wish to share in the financing and ultimate use of the buildings.*

Near the end of the decision, the Committee pointed out that once the experiment was completed, the most important criterion governing the service's future would be the traditional one — level of traffic:

> The conclusions below are described in somewhat greater detail than has been the practice in the past, due to the need to ensure that the experimental service is given a fair test. While in no way intending to pre-judge the situation, it seems reasonable that the train's continuance after the experimental period should depend primarily upon two factors: first, a significant improvement in traffic and

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* Decision, 1979 - CP: Halifax, Kentville and Yarmouth, pp. 38-39.

revenue; and second, the result of the above-described group's deliberations regarding a future role for the service.*

2.3.3 Selected Aspects of Transcontinental Train Service Rationalization since 1975

2.3.3.1 Introduction

The RTC's approach in decisions on the transcontinental services, as noted above, was consistent with its general approach to passenger-train discontinuances. There are several aspects of the Committee's work on rationalization of transcontinental services since 1975 which are of interest but were omitted from the foregoing discussion in order to facilitate the explanation of the Committee's general approach.** These aspects deserve mention and are presented in the discussion that follows.

2.3.3.2 The Committee's Approach to Avoiding Unnecessary Duplication

One point of interest is the RTC's approach to avoiding unnecessary duplication of routes. In the case of service to the Maritimes, the Committee in the Preferred Plan for the Eastern Transcontinental had to choose between providing service over one route, using CN's line between Montréal and Sydney/Halifax via Lévis, Campbellton and Moncton, or over two routes, one being the all CN route and the other using CP's route between Montréal and Saint John via Sherbrooke and the State of Maine. The costs, revenues and losses of using one or two routes with varying levels of traffic were estimated and analyzed. The Committee also pointed out that there was a demand for rail service in the region which in part arose from the lack of transportation alternatives, the relatively lower incomes and rates of car ownership in the region compared to the whole of Canada and the less-than-ideal weather conditions at times during the year. It was also noted that the choice of the one-route alternative would give a service from Central Canada which excluded two major cities, Fredericton and Saint John, New Brunswick.

In making the choice of alternatives and addressing the subject of duplication, the RTC said:

> On the basis of costs alone, it would be a relatively easy matter to argue that the two-route alternative does constitute duplication

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* Ibid., p. 39.

** This period covers the work of the RTC subsequent to the Minister's Directive.

and that if a single route were selected, there would be not only no duplication, but considerable saving in costs.

However, on the basis of potential markets, as well as on the principle of equality of accessibility to the railway system, it can be argued convincingly that the CP Rail route through Saint John should be retained and that to do so would not create "unnecessary duplication".

The test of either the existence of or the amount of duplication would come when the ridership was counted. Certainly the potential appears to be there for increasing traffic over this route. Similarly, the presence of VIA Rail Canada provides a new impetus to the former CP Rail service which, to say the least, under VIA's marketing is being operated with attractive new fares and more promotion than it has received in the recent past.

Therefore, the "duplication" question resolves itself in this way: there may be elements of physical duplication in having two transcontinental routes between Montréal and the Maritimes, even though they do not parallel one another directly and serve different regions, but it would not constitute unnecessary duplication if there issufficient traffic over both routes. While this latter point will require actual operation of the route through Saint John for some specified period in order to confirm the traffic potential there, we believe it exists. And to deny Fredericton and Saint John the direct access to Central Canada they presently enjoy would be unthinkable.*

Previously, in the Preferred Plan for Western Transcontinental Passenger Train Service, the RTC had to choose between providing service over one or two routes west of Winnipeg. It chose to use both CN's route running through Saskatoon and Edmonton and CP's going through Regina and Calgary. The basis for the selection was stated as:

> The preferred choice from among these is that which would serve the most people on both lines with a through service to Eastern Canada.**

2.3.3.3 Consideration of the Western Transcontinental Schedule

Another decision the RTC had to make with respect to the Western Transcontinental had to do with speed. In the words of the Committee:

> In arriving at a routing and schedule that would provide satisfactory service and at the same time provide for a more economical operation we were essentially faced with the following choices: to run a train with a high speed schedule but that

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* Canada, Canadian Transport Commission, Railway Transport Committee, Preferred Plan for Eastern Transcontinental Passenger Train Service, Ottawa: Canadian Transport Commission, December 1978, p. 26.

** RTC, Preferred Plan for Western Transcontinental Passenger Train Service, p. 51.

would result in inconvenient arrival and departure times at many places or to run a train at a slower schedule but that would serve more places at convenient arrival and departure times.

The speed factor has two other related considerations: geography and reliability. On the 3 000 mile distance which the transcontinental trains traverse there are large areas, such as sections of the Canadian Shield in Northern Ontario and the Rocky Mountains in Alberta and British Columbia, where sustained high speeds are physically impos-sible. On the other hand there are sections of relatively straight, flat track across the Prairies, where higher speeds are practicable. Similarly, given the unpredictable factors of climate and the substantial problem of freight traffic and track capacity, the question of the reliability of a fast train, that is, its ability to adhere to its fast schedule 100 per cent of the time, is an important one to which we have given a great deal of consideration. Therefore, in arriving at our choice for a Preferred Plan we have had to compromise between these oftentimes conflicting requirements for speed as opposed to reliability and convenient arrival and departure times, to provide a service which goes as far as it can towards satisfying all of these considerations.*

2.3.3.4 Consideration of Social and Economic Conditions

There is another item in the Preferred Plan for Eastern Transcontinental Passenger Train Service that deserves mention: the consideration the RTC gave to social and economic conditions in Nova Scotia and New Brunswick in assessing the need for rail transportation. It was observed that the region had a relatively higher rate of unemployment, a lower level of per capita income and a lower rate of car ownership than the national average. The Committee said:

> The implications of all of this are that there may be less travel, on a per capita basis, in the Maritimes than in other parts of the country but that there would likely be a greater tendency for people in the region to travel on public transport, especially rail and bus.**

2.3.3.5 Service over the Canadian Shield

In the Preferred Plan for Western Transcontinental Passenger Train Service, a discussion was presented on that portion of the route that ran across the Canadian Shield. It was pointed out that the small population in this area presented little potential for an increase in train passengers and that for the people living in the area the train was an essential means of transportation. It was then stated:

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* Ibid., p. 48.

** RTC, Preferred Plan for Eastern Transcontinental Passenger-Train Service, p. 10.

> The second conclusion is that the high cost of providing train service through this part of Canada, with little or no potential for increased revenue to meet those costs, is an essential part of maintaining the historic link between western and eastern Canada by passenger train.*

Further on, it is stated:

> To provide passenger-train service between Eastern and Western Canada in the future, it has to be recognized that the costs of operating the trains through this sparsely populated expanse of land of about 1 000 miles in length are costs that must be paid, if there is to be a transcontinental service at all. In devising the Preferred Plan we have taken this very important factor into account. We have also taken into account the fact that the possibilities of increased revenues from the carriage of passengers in amounts sufficient to offset materially the total costs of the transcontinentals must be found east and south of Sudbury/Capreol and west of Winnipeg. These passenger-train services through northern Ontario might be described as social in character because of their essential nature deriving from the remoteness and inaccessibility of the region they serve. While the costs of maintaining service to this region are borne by the tax-payers of Canada, the trains would have to continue regardless of whether a transcontinental continued to operate. The Preferred Plan is based on the assumption that the costs of these essential passenger-train services between Sudbury-Capreol and Winnipeg will remain as a charge on the public treasury to the extent that there is only a small passenger market to contribute to the payment of those costs.**

Finally, it was again noted:

> The point here is that we are talking about the cost of a transcontinental system in the sense of a system that links west and east, while at the same time providing an essential social service in the area of the Canadian Shield. We wish to emphasize the wide disparity between the total costs of bridging the Shield and the revenues earned from local and access passengers. And at the risk of repetition, we point out that these are costs to be borne by the Government of Canada as the price of linking the population sections of Eastern and Western Canada by passenger train.***

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* RTC, Preferred Plan for Western Transcontinental Passenger Train Service, p. 28.

** Ibid., p. 29.

*** Ibid., pp. 29 & 33.

Thus, it was argued that the passenger trains serving this area were essential for local passengers and would be required even if there were no transcontinental services. Therefore, a public subsidy, albeit a smaller one than if the transcontinental did not run, would be required for this local and access market. It was also pointed out that the local and access market was limited in size and could not be expected to generate further revenue for the reduction of the subsidy. The argument thus assigned primary responsibility for the subsidy on the limited size of the local and access market and on the essential nature of the service. It was then suggested that the subsidy be viewed as the cost of linking the populated areas of Western and Eastern Canada.

It should be added that the potential to generate local and access passengers may not be any greater on other segments of the route outside of the Canadian Shield, though in these cases the service may not be as essential. Furthermore, at the point at which the discussion took place in the Preferred Plan, it had been already established that transcontinental service was essential. It is important to note here that what is being discussed is subsidy allocation and not the RTC basic approach to the discontinuance decision.

2.3.4 Section 262 of the Railway Act

2.3.4.1 Introduction

Section 262 sets out the requirement that a railway shall, according to its powers, provide service to meet the traffic offered for carriage. It further establishes the powers of the RTC to order the railway to carry the traffic, if this is deemed necessary. The Committee has heard two cases concerning the carriage of passengers under this section. The first case dealt with an application to provide adequate and suitable passenger-train service between Barrie and Toronto, the second concerned an application for an order to direct Penn Central Transportation Company to furnish service between Valleyfield, Beauharnois, Chateauguay, and Montréal.

2.3.4.2 Services between Barrie and Toronto

John C. Mecdorf applied for an order directing CN to furnish adequate and suitable accommodation and equipment for passenger-train service between Barrie and Toronto. A decision favourable to the applicants was issued in early 1974. CN was ordered to operate a passenger train on each working day with the morning trip to Toronto to arrive between 8:00 and 8:30 a.m. and the return evening trip to leave Toronto for Barrie between 5:00 and 5:30 p.m.*

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* Decision, February 1, 1974 - Application of John C. Mecdorf et al. to the Railway Transport Committee for an Order directing CN to furnish adequate and suitable accommodation and equipment respecting passenger-train traffic offered for carriage between the terminal points of Barrie and Toronto.

As evidence in support of the service, the RTC had the results of a demonstration project authorized by the Minister of Transport. The project received financial support from the government and was carried out by the Department of Transport's Transportation Development Agency. The approval of the service was partly an implicit reflection of the Committee's consideration that the level of usage demonstrated by the experiment was sufficiently high.*

Subsequent to the initial decision and after the applicants and CN could not agree on a fare structure, the RTC exercised the power conferred on it by subsection 262(6) and established the fares for the services. An important consideration in its choice was that the fares encourage rail travel.

2.3.4.3 Service Between Valleyfield and Montrêal

An application for an order to direct Penn Central Transportation Company to furnish service between Valleyfield, was made by a committee to re-establish train service betwen Beauharnois, Chateauguay and Montrêal.

The RTC, in its findings, first gave an explanation of the difference between the case under consideration and the case of the Barrie — Toronto service:

> ...It should be noted that the Barrie — Toronto Decision did not actually re-establish a passenger train service previously discontinued following an order of the Commission or its predecessor, the Board of Transport Commissioners for Canada, but that it modified an existing passenger train service between these points by adding trains timed to suit the convenience of the passengers requesting the modified service. With respect to the present application, the matter to be considered is not a change in pattern or timing of an existing service. Rather, the matter is the re-establishment of a passenger train service discontinued eighteen years ago.**

Later it goes on to state why the Valleyfield — Montrêal service should not be re-established:

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* Decision, March 25, 1974, In the matter of the Decision and Order R-18042 dated February 1, 1974, in the application of John C. Mecdorf et al. to the Railway Transport Committee.

** Decision, February 24, 1976 - Application by "Comitê pour le rêtablis-sement du train de banlieue Valleyfield — Chateauguay — Montrêal" for an Order directing Penn Central Transportation Company to furnish adequate and suitable accommodation and equipment respecting passenger-train traffic offered for carriage between the points of Valleyfield, Beauharnois, Chateauguay and Montrêal, pp. 17-18.

> Taking all the evidence into account, our view of the case is that what concerns the population of the region as expressed at the hearing by several witnesses is to find a way out of the traffic congestion, more particularly on the Mercier Bridge system, caused by the people who commute to and from Montréal at rush hours. Even if we could make our decision solely on that basis, then having regard to the number of people who would benefit by the train service and to the millions of dollars which would have to be spent, we do not think that the rail passenger service provides the answer. The problem submitted to us of travelling to and from Montréal at rush hours without inconvenience or delay cannot be solved by the remedy which the applicant recommends but will only find its solution in the broader context of the planning of the access to the Island of Montréal.*

The RTC then noted that the proposed Valleyfield — Montréal train would be a commuter service and that section 261 excludes commuter services from receiving the 80 percent subsidy for which uneconomic services are eligible. Mention was also made of the capital assistance programme announced in 1975 to alleviate regional transport problems.**

The RTC concluded the decision by noting and explaining its support for the bus system in this case:

> Further, in reaching our conclusion, we have taken careful note of the position and situation of the bus company so clearly stated by the president of Metropolitan Provincial Inc. and we wish to emphasize our belief that to protect the interests of the users of transportation the best use must be made of the various modes. In ruling out the re-establishment of a passenger rail service at this time and under the circumstances prevailing and brought to the fore at the hearings, we may be taken as indicating our support for the continued economic and financial health of the bus system presently serving the people of the region, and that we believe to be in keeping with the National Transportation Policy.***

2.4 Summary

The government charged the RTC with the responsibility of overseeing the passenger-train discontinuance process while also giving it the duty to ensure that an economic, efficient and adequate transport system was maintained. It was seen in the preceding discussion that the Committee was consistent in its approach in making decisions on applications for discontinuance. It consistently based its decisions on the criterion of usage, except in those instances where community isolation was the paramount consideration. The Committee in making its decisions looked for evidence of a reasonable level of usage and when this was the case, it ordered a service not be discontinued. The assessment of traffic volumes not only included past and present usage but also encompassed an evaluation of the potential for patronage increases in response to service improvements.

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* Decision, 1976 - Penn Central: Valleyfield, Beauharnois, Châteauguay and Montréal, p. 18.

** Ibid., p. 18.

*** Ibid., p. 19.

The Committee's deliberations on the public interest with respect to a discontinuance application included, among other things, items (a) to (d) of subsection 260(6) of the Railway Act. With regard to item (a), actual losses, the RTC held that the level of usage must be reasonable in order to justify continuation of a service and the resultant losses. When the Committee made an assessment of the alternative passenger services available to an area, as required by item (b), it determined whether or not the withdrawal of train services would lead to isolation in the absence of reasonable alternatives. If in the case of a service with a low traffic volume the answer was yes, the Committee made an exception to its criterion of usage and did not discontinue the service. It was noted in the analysis, with respect to item (c), that the RTC included in its decision the impact of a service's withdrawal on other passenger-trains and passenger services. Finally, with regard to item (d), the Committee examined such factors as population growth, the development of alternative services and the energy situation when considering the future transportation needs of an area.

In its decisions the RTC also gave attention to such factors as the impact of discontinuance on employees and the expenditure of public funds on other modes.

The Committee was careful to point out that an order not to discontinue a service should not be taken as an indication that further improvements could not or should not be made to the service. It stated in decisions that additional efforts should be made to cut losses on services not discontinued and many times itself ordered or suggested changes.

In the early decisions on transcontinental services, the RTC held that provision of sleeping car, parlour car and meal services at a loss was not in the public interest. However, its position had changed by the time the Preferred Plan for Western Transcontinental Passenger Train Service was issued in 1977. It stated that meal and sleeping services were essential to the service, and that pricing them at a full cost recovery level would only destroy the market for transcontinental passenger trains. The Committee stated that the services should be priced at a reasonable level.

The Minister's directive of 1976 stressed the use of the best means of serving passenger demand, regardless of mode and called for the creation of a basic Canadian rail network which avoided duplication. These requirements were reflected in the decisions of the R.T.C. but otherwise there were no changes in the basic approach followed by the Committee over the period 1967 to 1980. Usage was the main criterion except in instances where an area was found to be isolated.

A change in emphasis rather than a change in approach, however, was noted in two decisions issued in 1979. In these cases, the Committee held that the services were still required but that something more than just continuing them was necessary. It called for a one-year experimentation on the two runs and stressed improvements in quality of the services. In addition it called for the formation of a group of interested parties to consider the future role of each service.

In the RTC's work on the rationalization of transcontinental services after 1975 there were several aspects of interest. One was the Committee's balancing of costs of two routes against potential markets and the principle of equitable accessibility in choosing two routes between Montréal and the Maritimes and in choosing two routes west of Winnipeg. Another aspect was the compromise the RTC made between speed and reliability and convenient arrival and departure times in selecting a longer schedule for the Western Transcontinental. The Committee's consideration of sound and economic circumstances in determining that there would in all likelihood be a greater need for public transportation in the Maritimes was also of interest. The last aspect to be noted was the discussion of the provision of passenger-train service over the Canadian Shield and the small size of the local market and its inability to make a sufficient revenue contribution to support services over the Shield.

In addition to applications for passenger-train discontinuance the RTC also handled two applications under section 262 of the Railway Act. The applications which required orders to direct in one case CN and in the other Penn Central Transportation Company to provide adequate and suitable accommodation and equipment respecting passenger traffic between Barrie and Toronto, and Valleyfield, Chateauguay and Montréal respectively. The RTC approved the first application and denied the second. In the Barrie-Toronto case the application was for the modification of an existing service and the Committee was persuaded in favour of the application in part by the high level of usage demonstrated by an earlier experimental service. The application in the Valleyfield-Montréal case was to re-establish a service which had previously been discontinued and the Committee did not think rail-passenger service provided the solution to the traffic congestion problems encountered going to and from the Island of Montréal, but rather felt the solution was to be found in a broader transportation planning context.

Chapter 3

RAIL BRANCH-LINE ABANDONMENT

Branch line abandonment is not a recent concern of the government or the railway companies. This is particularly true in the Prairie Provinces, where most of the uneconomic branch-line mileage is located. The federal government, in dealing with the problem, has been faced with the task of removing the financial burden of the lines from the railways in order to maintain an economic and efficient railway system while at the same time ensuring that an adequate transport service is offered. The regulatory responsibility for overseeing branch-line abandonment has, for many years, been assigned to the Canadian Transport Commission and its preceding agencies.

This chapter consists of four sections which deal with the subject of branch-line abandonment. The first section presents an historical synopsis of the factors and events leading up to the present rail situation in the Prairie Provinces and the need for rationalization of the western rail network. This is followed by a section on the institutional framework outlining the acts and policies within which the CTC must operate in the area of branch-line abandonment. The third section draws upon the background material of the first two sections and presents an analysis of Prairie branch-line decisions. The last section of the chapter provides an examination of Nonprairie branch-line abandonment decisions.

3.1 History

3.1.1 The Factors that Lead to Abandonment

3.1.1.1 Overbuilding of Branch Lines

Many thousands of miles of track were constructed in the Canadian West in the period beginning in the 1880's with the construction of the Canadian Pacific and ending in the 1930's with the close of the competing efforts between Canadian Pacific and Canadian National to build branch lines. Railway building in this period was given substantial financial assistance by various governments for a variety of reasons. Initially, there was the need for a transcontinental rail link to unify the country in order to stave off American encroachment of Canadian territory. Subsequently, there was a desire for additional railways to provide more adequate transportation in the Prairies and to provide competition for the Canadian Pacific.

The end result of this extensive construction was an overbuilt railway network which contained considerable duplication and which did not have sufficient traffic to support it. This problem was later exacerbated when the railways began to realize losses on grain traffic as costs grew beyond the fixed level of the Crow's Nest Pass Rates. Truck competition also had an impact by reducing the ability of the railways to use value-of-service pricing to cross-subsidize unprofitable operations and by eroding railway branch-line traffic.

The construction, and eventual completion in 1885, of the Canadian Pacific Railway from Central Canada to the Pacific Coast was undertaken to fulfill a promise made to British Columbia on its entry into Confederation. Subsequently, branch lines in the Prairies were built to the north and south of the mainline with the objective of generating traffic. At that time, Canadian Pacific was without competition in the West due to the fact that the company, when incorporated, had been granted a twenty-year monopoly on railway traffic. However, as a result of protests from the West with respect to the railway's monopoly the federal government in 1888 negotiated the removal of the monopoly clause in exchange for a government guarantee of the interest payment on a company bond issue.

The elimination of the monopoly provision did not, however, result immediately in any significant amount of rail-line construction. It was not until the turn of the century that significant expansion began. The need for a more adequate railway system, the desire for rail competition in the West and the interest of two companies in sharing the traffic growth associated with a renewed prosperity gave rise to the construction of two new transcontinentals, the Canadian Northern Railway and the Grand Trunk Pacific.

The building of the mainlines and branch lines of these two new railways, along with additions made by the Canadian Pacific resulted in a large increase in rail mileage in the period 1900 to 1914. Neither the Canadian Northern nor the Grand Trunk Pacific had been completed when World War I started and both companies began to face difficulties in raising capital. The government worried what effect the financial collapse of these companies might have on the credit of Canada and thus came to their aid with loans and guarantees. Then, in 1916, the government appointed a royal commission to examine the general problem of transport in Canada with specific attention to be directed towards the status of the three transcontinentals and their possible reorganization or acquisition by the government.

The majority report of the Commission recommended that the Canadian Northern, the Grand Trunk Pacific, the Grand Trunk and the government lines (the Intercolonial, the Prince Edward Island Railway and the National Transcontinental) be transferred to a new public authority to be known as the Dominion Company. The Commission's recommendations laid the ground work for the eventual formal amalgamation of the various railways into the Canadian National Railway in 1923.

The period from 1924 to 1930, subsequent to the formation of Canadian National, was one marked by intense competition between the two transcontinentals. This rivalry manifested itself mainly in the form of branch-line construction and was supported by the general economic prosperity of the times. The Canadian National, with funds freely voted by Parliament, set about generating traffic through the construction of branch lines. The Canadian Pacific felt compelled to follow suit. The result was the construction of considerable mileage of track which was mostly in the Prairie Provinces. Instead of co-operation between the two railways there was severe competition which often resulted in wasteful duplication of branch lines.

The magnitude of the growth of the rail network in the Prairie Provinces can be seen in the figures presented in Table 3.1 for the years 1906 to 1935. This period begins a few years after the start of the two new transcontinentals and extends into the depression years when the branch-line construction competition between Canadian National and Canadian Pacific had ended.

Table 3.1

RAIL MILES OF TRACK, 1906-1933

Year	Miles of track			
	Manitoba	Saskatchewan	Alberta	Total
1906	2 774	1 957	1 235	5 966
1910	3 221	2 932	1 488	7 641
1915	4 498	5 327	3 174	12 999
1920	4 404	6 220	4 474	15 098
1925	4 539	7 056	4 965	16 560
1930	4 410	8 175	5 607	18 192
1935	4 970	8 555	5 760	19 285

Source: Hall Commission, Grain and Rail in Western Canada, Vol. 1, Ottawa: Supply and Services, 1977, p. 30.

3.1.1.2 The Crow's Nest Pass Agreement

By the mid 1930's there existed an overbuilt network which required rationalization and, as time passed, the need to rationalize was gradually heightened as conditions in the transport market changed. One of the factors which increased this pressure for change was the growth in the costs of grain transport to the point where the Crow's Nest Pass Rates were eventually non-compensatory. These rates, which now come under the Railway Act, were originally established pursuant to the Crow's Nest Pass Agreement made between the federal government and Canadian Pacific in 1897. The government agreed to provide a subsidy of 11 000 dollars a mile for the construction of a rail line from Lethbridge through the Crow's Nest Pass to Nelson, B.C. In return Canadian Pacific agreed to: reduce rates on the outbound movement of grain and flour from the West to Thunder Bay and points east by 3¢ per hundred pounds; reduce rates on certain inbound goods, termed settler's effects; and accept the control of its rates by the Governor-in-Council or a railway commission. The reduction in grain and flour rates was eventually extended to other railways and to westward export movements from the Prairies through the ports of Vancouver and Prince Rupert, and to northward shipments through the port of Churchill.

The exact date when these rates became non-compensatory is not known. The Canadian Pacific stated to the Turgeon Royal Commission on Transportation of 1951* that the Crow rates were not compensatory and it estimated that its losses on grain and flour traffic for 1948 were between 13.8 and 16.9 million dollars. The Commission did not accept these figures as being definitive and pointed out that it was not known what the answer would be under another formula which was claimed to be more accurate. The 1961 MacPherson Royal Commission on Transportation also examined the question of statutory rates and found that the railways were losing money on grain traffic.** It gave estimates of the losses on this traffic for 1958 and recommended that in the future the railways be reimbursed for these losses.

The Snavely Commission of 1976 on the Costs of Transporting Grain by Rail also produced estimates of the deficits incurred on grain traffic and stated that the problem of the revenue shortfall is due to both "branchness and grainness". It said:

> Branchness is, of course, a problem that is not confined to the carriage of grain. Branchness is a density problem and one which can be, and undoubtedly is, experienced throughout Canada in greater or lesser degrees. Further it is not necessarily confined to light density lines which originate or terminate traffic that have non-compensatory or marginally compensatory rates—though, admittedly, the presence of low rates exacerbates the problems of branchness. Branchness, by and large, is a problem related to the need to provide rail transportation service to particular communities or areas. As such, it should be dealt with on a nation-wide basis and on a basis which truly reflects the cause of the problem.
>
> Grainness, on the other hand, is a problem that is local to the Prairie Provinces and one that is concerned with grain and grain products for export. As such, it must be dealt with on the basis of the need for the transportation of the commodity, the ability of the beneficiaries of the transportation service to pay for that service and the impact that its transportation at less than compensatory rates has on other commodities and industries.***

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* W.F.A. Turgeon, Chairman, Report of the Royal Commission on Transportation, Ottawa: The King's Printer, 1951.

** M.A. MacPherson, Chairman Report of the Royal Commission on Transportation, op. cit.

*** C.M. Snavely, Chairman, The Report of the Commission on the Costs of Transporting Grain by Rail, Vol. II, Ottawa: The Queen's Printer, 1977, p. 152.

Commissioner Snavely held that the two problems must be dealt with separately in order to achieve a solution to Prairie rail problems.

3.1.1.3 Truck Competition

Truck competition grew significantly during the 1950's and contributed to the need for branch-line abandonments across Canada. Trucking services offered certain advantages of frequency and price, and they all but eliminated the feeder function of branch lines for many types of traffic and thus contributed to the magnitude of the problem by increasing the number of light-density lines. Truck competition also created another problem. Previously, many branch lines had not been profitable but the railways had used value-of-service pricing to carry them. However, the truck was now also competing with the railways for the mainline hauling of high-valued goods and this meant that the railways' ability to cross-subsidize unprofitable operations such as branch lines, passenger services and grain transport through value-of-service pricing was greatly reduced.

In summary, the railways were left with many uneconomic branch lines as a result of overbuilding, non-compensatory Crow rates and truck competition. These lines imposed a financial burden on the railways which in turn reduced the resources available to them to maintain and modernize parts of the rail system. This meant that the railways were unable to be as economic and efficient as possible and consequently, were unable to achieve their competitive potential.

3.1.2 The Social Impact of Branch-Line Abandonments

The abandonment of branch lines, however, raises questions, beyond economic considerations, such as the impact of closure on the communities served and the adequacy of the other transport modes that will serve the public after abandonment.* One argument often put forth with regard to the impact of rail-line abandonment is that the survival of a community is dependent on railway service. A number of studies and reports have attempted to examine the impact of abandonment on communities.*

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* Closely tied in with branch-line abandonment is the rationalization of the grain elevator system. This too involves questions of economics and community impact.

Recently, the Hall Commission offered the view that railways have ceased to have as great an effect on the communities as they once did 30 to 50 years ago. It stated:

> Rail is and will continue to be the principal mode of transport for the movement of grain. As a transportation mode and as a service to producers, railways will continue to play an extremely important role in Western Canada. It is as a service to the farm community, not as a community employer, that the railways will render their contribution. Resources spent on the retention of very light density, and in some cases redundant lines, subtract from the resources necessary to render efficient service for Western Canada as a whole.**

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* A partial list of these studies include:

Canada, Canadian Transport Commission, Railway Transport Committee, Community Changes in Relation to Rail Rationalization in the Prairie Provinces, Ottawa: Canadian Transport Commission, June 1970.

Canada, Canadian Transport Commission, Economic Branch, Factors Influencing the Choice of a New Delivery Point and Elevator Company by Prairie Farmers Facing Delivery Point Closure, Ottawa: Canadian Transport Commission, 1972.

Mozersky, Kenneth A., "The Structural Determinants of Individual Perceptions to Social Change in Western Canadian Communities", Canadian Journal of Agricultural Economics, Vol. 21, No. 1, Edmonton: Canadian Agricultural Economics Society, February 1973, pp. 27-50.

Hodge, G. "Branch Line Abandonment: Death Knell for Prairie Towns?", Canadian Journal of Agricultural Economics, XVI, Edmonton: Canadian Agricultural Economics Society, 1968, pp. 54-70.

Stabler, J.C., Economic Effect on Rationalization of the Grain Handling and Transportation System on Prairie Communities, Saskatoon: Office of the Minister of Transport, 1972.

Pamela Smith, The Community Impact of Rail Line Abandonment, Summary Report, Regina: University of Regina Sample Study and Data Bank Unit, 1975-1976.

** Canada, The Hall Commission Grain and Rail in Western Canada, Vol. 1, Ottawa: Supply and Services, Nov. 1977, p. 86.

3.1.3 History of the Federal Government's Role in Branch-Line Abandonments

3.1.3.1 The Period 1933 to 1975

The broader social questions, however, meant that the abandonment decision could not be left solely to the railways. Prior to 1933, the Board of Transport Commissioners only had a say in those branch-line abandonments where a railway, either by its special act of incorporation or by agreement, was required to maintain the line.* In the case of CN, its act of incorporation stated that it could only abandon a line on the approval of the Governor-in-Council acting upon a recommendation of the Board. The Board's power over abandonments, however, was extended in 1933 by an amendment to the Railway Act which stated:

> 165A. The Company may abandon the operation of any line or railway with the approval of the Board, and no company shall abandon the operation of any line of rail without such approval.**

However, this new provision did not provide any guidelines upon which the Board could judge such applications. The Board decided that losses alone should not justify abandonment and that the decision on closure should be based on whether the loss and inconvenience to the public was greater than the financial burden that would be placed on the railway by continued operation.***

The Duff, Turgeon, and Gordon Royal Commissions all recommended that the railways should abandon unprofitable and unnecessary rail lines.**** The seriousness of the branch-line problem was made apparent by the MacPherson Royal Commission on Transportation. It recommended that the railway plant be rationalized, but it also realized that it would be a mistake to do this abruptly because of the impact of such changes. With this in mind, the Commission suggested that the adjustments be made over a period of 15 years and during that time an annual subsidy of 13 million dollars be paid to the railways to compensate them for their estimated losses.

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* H.E.B. Coyne, "The Railway Act", Railway Law of Canada, Toronto: Canada Law Book Company Limited, 1947, pp. 188-189, section 165A.

** Railway Act, Statutes of Canada, 1932-33, section 165A.

*** A.W. Currie, Transportation Economics, Toronto: University of Toronto Press, 1967, p. 339, CNR & Tweed, (1935) 44 C.R.C. 53, 25 J.O.R.R. 159, 161-2 and Vancouver & Eastern Ry & Navigation Co. v. Princeton, (1936) 45 C.R.C. 178, 197; 26 J.O.R.R. 159, 29, 40.

**** Canada, Lyman Poore Duff, Chairman, Royal Commission to Inquire into Railways and Transportation in Canada, Ottawa: The King's Printer, 1932, p. 54.

Canada, W.L. Gordon, Chairman, Royal Commission on Canada's Economic Prospects, Final Report, Ottawa: The Queen's Printer, 1958, p. 284.

Turgeon, Report of the Royal Commission on Transportation, p. 135.

The general philosophy of the MacPherson Royal Commission was reflected in the National Transportation Act passed in 1967. It made specific provision for the abandonment of uneconomic branch lines, requiring that regulatory approval be obtained for any closures. The Act also stipulated several factors, similar to those specified for passenger-train discontinuance reflecting the public interest, that the RTC was to take into its consideration, in the abandonment decision. Furthermore, the Act provided for the payment of a subsidy to compensate the railways for actual losses on branch lines deemed to be uneconomic.

The actual number of abandonments which have taken place since World War II are presented in Table 3.2. From the early 1960's through to 1975 there were relatively few branch-line closures. There are a number of explanations for this. Subsequent to the MacPherson Commission, the Conservative government requested the Board to defer abandonment cases because of elections and then the succeeding Liberal government requested that cases be delayed to give it time to consider the McPherson recommendations. In May 1967, prior to the NTA coming into force, the government issued an order which prohibited the abandonment of approximately 17 000 miles of western lines until January 1, 1975.

Only 1 839 miles were left unprotected but this mileage was also included in the 1973 freeze on branch-line abandonment. When the Prohibition Order was issued in 1967, the railways had applications pending for the abandonment of 3 725 miles of track. The 1 839 unprotected miles were included in this total but no approvals were granted for them in the period 1967 to 1973 for several reasons. These included: the development of Costing Order R-6313, the priority assigned to passenger-train discontinuances due to their relatively large subsidy requirements, and the work of the Grains Group of the Canadian Wheat Board in planning the rationalization of the grain handling and transportation system.

In December 1974, with the freeze on abandonment about to expire, the government designated 12 413 miles of Prairie branch lines as a basic network and protected them from abandonment until the year 2000. An additional 6 283 miles of track were protected until the end of 1975 to permit further evaluation. Finally 525 miles were left unprotected and subject to approval for abandonment by the RTC. Since that time, approvals for this last group of lines have been granted and abandonment orders have been issued by the CTC.

Table 3.2

PRAIRIE BRANCH-LINE MILEAGE:

ABANDONED 1956 TO 1967

AND APPROVED FOR ABANDONMENT 1967 TO OCTOBER 1980

Year	Mileage
1952	78
1954	12
1960	215
1961	17
1962	75
1963	60
1965	30
1975	400
1977	454
1978	678 *
1979	217
1980	91
total	2 327

* This mileage includes a portion of CN's Amiens Subdivision that a review decision stated should be retained for two years.

3.1.3.2 The Period 1975 to 1980

In April 1975, the government announced the appointment of two commissions of inquiry:

(i) The Hall Commission was appointed to undertake a series of inquiries in the areas served by the 6 283 miles of protected lines and recommend their future disposition. The Order-in-Council appointing the Commission required it:

> To inquire into the rail needs of communities, the economies of a modernized rail system and the probable conduct of producers and elevator companies in changing circumstances for purposes of making recommendations concerning the future role of that portion of the rail network identified for further evaluation.*

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* Order-in-Council No. PC 1975-872.

(ii) The Snavely Commission was appointed to investigate the costs of transporting grain by rail. In its report, released in December 1976, the Commission identified the costs and revenues involved in transporting grain under the existing conditions, and evaluated various railway costing practices using the CTC costing order as a base. The Report recommended both to the railway companies and to the CTC various technical aspects for improving costing methodologies, and ways in which to achieve a faster, more efficient movement of grain.

The Hall Commission required approximately two years to complete its work and thus it was necessary to extend the freeze twice, through to June 1977, on the 6 283 miles of line under study. The Commission submitted its report in April 1977, and suggested various improvements to the grain handling and transportation system and recommended the following disposition of mileage: 2 165 miles should be abandoned over a five-year period beginning in 1977; 1 813 miles should be added to the Basic Network and 2 344 miles should be turned over to a newly formed agency for continuing study and assessment.* This new authority was to disappear in 1990 when all the lines assigned to it had either been added to the Basic Network or abandoned.

It soon became apparent that the railway and elevator companies would not commit capital funds to lines assigned to continuing evaluation when their status could remain undecided as late as 1990. The government moved to eliminate this uncertainty in May of 1977 by creating the Prairie Rail Action Committee (PRAC) which was to decide quickly on the disposition of the 2 344 miles. At the same time the government, through Orders-in-Council, ensured the protection of the basic network to the year 2000 and protected the lines assigned to PRAC to the end of 1978.

The Minister of Transport also announced a Prairie Branch-Line Rehabilitation Programme under which the government would provide up to 800 million dollars over eight to ten years to upgrade grain-related branch lines. The priorities for spending the first 100 million dollars authorized were to be determined by PRAC.

The final report of PRAC was submitted in January 1979. In total, PRAC reviewed 2 543 miles of track of which 1 044 miles were recommended to be added to the Basic Network; 1 416 miles were recommended for abandonment and 82 miles to be released from the protected category.**

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* Hall Commission, Grain-and-Rail in Western Canada, op. cit. The small difference between the mileage considered by the Commission and the mileage assigned to it for study is mostly explained by recommended new construction.

** PRAC reviewed approximately 200 miles more track than the Hall Commission identified for continuing evaluation. The 200 miles consisted of: 35 miles of new construction; 117 miles of the basic network that is now to be abandoned, and 43 miles previously recommended for abandonment that was now to be added to the basic network.

In July of 1979 the Minister of Transport of the newly elected Conservative government announced the appointment of a special advisor on Prairie Branch Lines. M.P. D. Neil, from Saskatchewan, was asked to determine at which delivery points on the lines, about which the RTC had not yet held hearings, the elevator companies planned to maintain service. The Minister also requested the RTC to place a 90-day freeze (later extended to January 1, 1980) on the mileage to be reviewed.

Mr. Neil examined approximately 1 681 miles of line and advised the Minister that: 597 miles should be added to the Basic Network, 343 miles should be converted to off-line elevator service, and 711 miles should be turned over to the CTC for hearings. The Minister, in December of 1980, adopted the first and third recommendations in full and decided, with respect to the concept of off-line elevator service, to experiment with it on one line. The remainder of the lines in the off-line group were to be retained for a minimum of five years or more depending on the outcome of the experiment.

Finally, in August 1980, the Minister of Transport of the new Liberal government, announced that he confirmed the earlier decision to add the mileage to the Basic Network. He decided, however, to turn over to the CTC for hearings those lines which had been retained for five years to await the outcome of the off-line experiment.

3.2 Institutional Setting

The statutory provisions governing the abandonment and subsidization of branch lines are found in sections 252 to 258 of the Railway Act. These sections were introduced into the Act in 1967 with the passage of the NTA. Previously, there were no specific provisions governing branch lines and all abandonments were dealt with under section 106 of the Act. Unlike section 106, however, these new provisions set out factors that were relevant to the public interest and which should be considered in the abandonment deliberations along with any other matters the RTC deems pertinent. For the first time, provision was made for reimbursing the railways for the actual losses incurred in the operation of uneconomic branch lines.*

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* The railways had the option (see section 257), when the NTA amendments to the Railway Act became effective, of electing to transfer an application pending under section 106 to section 253. It was necessary, however, that, at the time, the railway supply written notice of such a choice that an application for abandonment could be made directly under section 253. For example, application for nonbranch lines or protected lines could not be transferred. Under section 259 it was also stipulated that after March 22, 1967 approvals for abandonment under section 106 had to be in accordance with any regulations made by Governor-in-Council. Regulations were established by Order-in-Council PC 1967-569 and later PC 1968-1874. They stated that the Commission shall not approve under section 106 the abandonment of the operation of a branch line within the meaning of section 252 except for those branch lines not on the Prohibition Order and for which an application was pending on the effective date of the regulation.

3.2.1 Section 252

The first of the new sections, section 252, provided a definition for the term branch line.* It states:

> "branch line" means a line of railway in Canada of a railway company that is subject to the jurisdiction of Parliament that, relative to a main line within the company's railway system in Canada of which it forms a part, is a subsidiary, secondary, local or feeder line of railway, and includes a part of any such subsidiary, secondary, local or feeder line of railway.**

A decision was issued in January 1979 which dealt with three contentious issues.*** One of them was the distinction between a main line and a branch line.**** Though the decision was with regard to subsidies, the points raised were of interest to the present discussion.

With regard to the branch line definition, the RTC noted that to declare a line to be a branch line it was first necessary to know the characteristics of a main line. It also pointed out that the definition given in section 252 was the only one available in jurisprudence.

The Committee then went on to set out three criteria for classifying main lines:

- to provide a national network to serve the internal need of the nation to transport traffic between major regions, populations, and industrial concentrations;

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* The term "actual loss" is also defined in section 252 but is not discussed here since this report does not deal with costing matters. It is, however, necessary, a little later in this section to refer briefly to the term and its use in the abandonment decision.

** Railway Act, (1970), section 252.

*** Decision, January 22, 1979 - In the matter of sections 252 to 258 Railway Act and in the matter of the distinction between main line and branch line, the segmentation by railway companies of their branch lines and whether or not "bridge" traffic carried on branch lines should be included in the calculation of the actual loss of a branch line.

**** The other two issues were branch-line segmentation and the inclusion of bridge traffic in loss calculations. With respect to the former, it was decided that railways may file claims for segments of line, as long as a segment not claimed would not be isolated by the abandonment of the claimed segment. With respect to the latter, it was decided that the Railway Act did not contemplate the inclusion in the subsidy calculation of costs and revenues associated with bridge traffic.

- to provide the necessary links to both the continental and global transportation networks as appropriate to a nation, one quarter of whose gross national product is derived from demands of its foreign customers;
- to maintain links which are an important element in the nation's identity.*

It then designated which lines of CN, CP and Northern Alberta Railway met the criteria. With this done, the next step was to look at traffic density anomalies to determine if any lines might be added or dropped from the main-line network. A review of traffic density on the designated main lines produced a figure of two million gross ton-miles per mile of track as the threshold density necessary before a line could be considered for possible addition to the main-line network. The Committee identified several lines using the threshold figure, some of which would be suitable to be added to the network.

3.2.2 Section 253

Section 253 in general pertains to the application for abandonment and the steps the RTC is required to take upon receipt of an application. The powers of the CTC to make regulations governing applications for abandonment and the necessity of the railways to file abandonment applications are given in subsections 1 and 2 respectively. Subsection 3 stipulates that the application must be accompanied by a statement of costs and revenues for a prescribed number of accounting years. In Order No. R-6315, "Regulations Governing Applications to Abandon the Operation of a Branch Line", the prescribed years have been set as the three financial years preceding the date of the application. The order also requires the railway to file traffic figures for the five financial years preceding the application date.

Once the RTC receives the application, it is required by subsection 4 to investigate and review the statements of costs and revenues along with any other material it deems relevant, and to prepare a report which determines the amounts, if any, of the actual losses incurred in each of the prescribed accounting years.

3.2.3 Section 254

If the CTC verifies a loss in one or more of the three years including the last year, then, in accordance with subsection 254(1), it must make a determination of whether the branch line is uneconomic and whether it will continue to be. The Commission is required, however, to reject the application if there was no loss in the most recent of the three years.

The meaning of the term uneconomic was examined in Reasons for Order No. R-6313. Part of this discussion was presented earlier with respect to passenger-train services and will not be repeated here except to say that the RTC held that the term referred only to railways and not to other modes, and that there is a difference between unprofitable and uneconomic. The Committee also found that the decision to designate a line uneconomic should include consideration of the possibility that rationalization of other lines will change the status of the line in question.

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* Decision, 1979, Main-line, branch-line distinction, p. 7.

In the words of the RTC:

> The Committee, therefore, cannot accept the rather rigid definitional limitation advocated by Canadian Pacific that only the line proposed for abandonment can be considered in making the "uneconomic" designation. We agree with Counsel for the Government of Saskatchewan that section 314C appears to include rationalization of the branch line structure as set forth in section 314C(2) as a specific ingredient of the "uneconomic" determination.

Finally, the Committee, after giving the above findings, offered the following definition of the term "uneconomic":

> Accordingly, the Committee has determined that the expression "uneconomic", as used in reference to branch lines in section 314C, means the line must not only be unprofitable, but it must be incapable of being rendered profitable within the scope of all feasible alterations in the operating practices of the railway, the scheduling and routing of traffic, or the restructuring of the branch lines themselves.*

Once it was determined that the line was uneconomic, the RTC must decide if it is to be retained or abandoned. Subsection 254(3) sets out several matters that the CTC must include among the factors it deems relevant to its consideration of the public interest in the making of this decision. All of the eight factors listed in this subsection are in support of arriving at such a decision:

> (a) the actual losses that are incurred in the operation of the branch line;
> (b) the alternative transportation facilities available or likely to be available to the area served by the branch line;
> (c) the period of time reasonably required for the purpose of adjusting any facilities, wholly or in part dependent on the services provided by the branch line, with the least disruption to the economy of the area served by the line;
> (d) the probable effect on other lines or other carriers of the abandonment of the operation of the branch line or the abandonment of the operation of any segments of the branch line at different dates;
> (e) the economic effects of the abandonment of the operation of the branch line on the communities and areas served by the branch line;

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* RTC, Reasons for Order No. R-6313, p. 398.

> (f) the feasibility of maintaining the branch line or any segment thereof as an operating line by changes in the method of operation or by interconnection with other lines of the company;
> (g) the feasibility of maintaining the branch line or any segment thereof as an operating line either jointly with or as part of the system of another railway company by the sale or lease of the line or segments thereof to another railway company or by the exchange of operating or running rights between companies or otherwise, including, where necessary, the construction of connecting lines with the lines of other companies; and
> (h) the existing or potential resources of the area served by the branch line, seasonal restrictions on other forms of transportation therein and the probable future transportation needs of the area.*

With respect to the first consideration, it should be noted that there are two actual-loss calculations.** The first is used for abandonment applications and treats the line as an integral part of a going concern, and the second is used for subsidy claims and treats the line as a sunk investment. One of the main differences between the two calculations is that in the first case a normal depreciation charge is allowed for road property but, in the second, only declines in the net salvage value of road property are permitted to be charged as depreciation. In Reasons for Order No. R-6313, the RTC held that both loss calculations are to be considered in the discontinuance decision. It stated:

> The first of the matters enumerated in section 314C(3) (old, now 254(3)), which the Committee must include in its consideration of a proposed abandonment is the actual loss incurred in the operation of the branch line. The foregoing discussion has set out two actual loss calculations: the first, which approaches the line as a going concern, is to be used for applications to abandon under section 314B, and the second, which views the line as a "sunk investment", is to apply to subsidy calculations under section 314E (old, now 356). The Committee, in considering the abandonment of a branch line under section 314C (3) (old, now 359), will take into account both of these actual loss calculations, as well as the significance of differences, if any, between them. Accordingly, after the Committee finds an actual loss under section 314C (1) (old, now 254), the railway will be required to submit another actual loss calculation based on the prescription set forth above for the computation of subsidy. Both of these calculations will be considered as evidence in making the determination as to whether the line should be abandoned.

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* Railway Act, (1970), subsection 254(3).

** RTC, Reasons for Order No. R-6313, p. 398.

The Committee at the same time also commented on the evaluation of the impact that diverted traffic from a closure would have on other lines:

> It is at this point that the Committee will want to conduct a detailed examination of the effects which abandonment would have on the existing traffic on the line under study.
>
> The Committee's consultant pointed out that in Western Canada most of the grain traffic is essentially captive to the railway system. As a result, branch-line abandonment will merely divert existing grain traffic to the railway lines which continue to operate. The point was emphasized in the submissions of the Governments of the Provinces, the Canadian Co-operative Wheat Producers, and the Manitoba Branch Lines Association. This issue can have a significant influence on the determination to abandon an uneconomic line if the effect of abandonment is to increase losses on the lines to which the traffic is diverted.
>
> In order to provide the basis for an evaluation of traffic diversion, the railways should submit with each application a detailed statement of the probable disposition of the existing traffic on the line proposed for abandonment, that is to say, the amount of traffic which will be lost altogether and the new routing of traffic which will be retained.
>
> Following its determination under section 314B (old, now 253) that actual losses exist, the Committee may direct the applicant to furnish special "before and after" cost and revenue comparisons on the lines to which the traffic is diverted. These will be used in the course of the Committee's considerations under section 314C (old, now 254).*

Where, as a result of its deliberations on all relevant factors, the RTC orders a line not to be abandoned, it is required by subsection 254(5) to review the application for abandonment at intervals not to exceed five years. If, on review, it is found that the line has become economic, the application must be rejected, but if it continues to be uneconomic the Committee must decide whether or not it should be abandoned.

Section 254 also gives the RTC certain powers to aid in its work. These include the power: to consider in a group those applications pertaining to the same area or adjoining areas, to require any railway operating lines in the same area as the one under application to supply traffic figures for those lines, and to require a railway to state the order in which it wants its applications handled.

3.2.4 Sections 255 to 259

One aspect of the eight factors outlined above is that the RTC considers, in its decision, the possibility of rationalizing lines within a company or between companies. Subsection 255(1) gives the RTC the power to recommend to the railways: to exchange branch lines by lease or purchase; to exchange operating or running rights; to connect branch lines of a company or between companies and to abandon lines for which no application has been made.

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* RTC, Reasons for Order No. R-6313, p. 399.

Among other things, section 255 also states that the CTC shall report such recommendations to the Governor-in-Council and if the recommendation involves the railways in costs not recoverable under section 256 or if the recommendation is not acceptable to one or more of the involved railways, the Governor-in-Council may cause to be taken such legislation or other action as is considered necessary in the public interest.

For the purposes of this report it is not necessary to examine sections 256, 257 and 259 in detail. It is sufficient to say that section 256 deals with the payment of subsidies to reimburse railways for actual losses incurred on uneconomic branch lines, section 257 deals with the treatment of applications pending under section 106 when sections 252 to 259 come into effect and section 259 states that applications pending under section 106 after March 22, 1967 must be dealt with in accordance with regulations established by the Governor-in-Council.

Section 258, the final section to be discussed, gives the Governor-in-Council power to designate branch lines that shall not be abandoned within a fixed period or to designate areas within which lines shall not be abandoned during a given period. Provision for the payment of subsidies to the railways on those designated lines being operated at an actual loss is made in subsection (2).

3.3 Analysis

This section presents an analysis of Prairie branch-line abandonment decisions for the period 1975 to October 1980. There were no decisions for the years 1967 to 1974 mainly because of the freeze placed on abandonments by the government.

When examining these decisions there are several things worth noting. First, the lines being decided on were either not in use, or offered service on an "as and when required" basis and handled a low volume of traffic. All of the lines decided on in 1975 and three of those decided on in 1977 had been left unprotected by the 1974 Prohibition Orders because of this lack of use. Second, all of the other lines dealt with in 1977 and later years had either been recommended for abandonment by the Hall Commission or transferred to PRAC and then recommended for abandonment. In addition, two of these lines had also been recommended by Mr. Neil for CTC hearings. The final point to consider is that many of the lines were in poor physical condition.

3.3.1 The Committee's Approach to Prairie Branch-Line Abandonment

The number of decisions issued in each year along with the mileages approved or not approved for abandonment and the number of subdivisions involved are presented in Table 3.3. In general, applications for abandonment have been granted approval. The exceptions, which occurred in 1975 and 1980, pertain to five applications. Furthermore, the Review Committee, to date, has found with respect to applications made to it that three decisions were reviewable and has referred them to the RTC to conduct the review. These have been done and two of the decisions were to stand. In the third case, it was decided to retain a portion of the line for two years to allow the grain producers an opportunity to reach the viability level for grain handlings.*

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* Decision, October 6, 1975 - Application of CP to abandon portion of Rosemary Subdivision.

Decision, March 24, 1980 - Applications of CP to abandon portions of Shamrock Subdivision

- Application of CN to abandon portion of Gravelbourg.

Decision, October 22, 1980 - Application of CN to abandon portion of Carlton Subdivision.

Order No. R-31231 WD, August 7, 1980 - In the matter of Order No. R-28180 ordering CP to abandon portion of Carlton Subdivision.

Decision, May 29, 1980 - In the matter of Decision dated January 18, 1979, and Order No. R-28214 authorizing CN to abandon portion of Meskanaw Subdivision and in the matter of application by Mr. Les Benjamin, M.P., for review.

Decision, June 20, 1980 - Application for review of Order No. R-26840 authorizing CP to abandon portion of Lenore Subdivision.

Decision, February 25, 1980 - In the matter of Order No. R-27953 ordering CN to abandon, on August 31, 1979, portion of Amiens Subdivision.

Table 3.3

PRAIRIE BRANCH-LINE DECISIONS

	Number of Decisions*	Number of Subdivisions***	Miles Approved for Abandonment	Miles Not Approved for Abandonment
1975	22	22	400	12
1976	-	-	-	-
1977	18	18	454	-
1978	26	32	678	-
1979	5	5	217	-
1980	5**	6	91	164
Total			1 840	176

* Does not include review decisions.

** Includes one report and order for CN's Carlton Subdivision.

*** A subdivision has been included two or more times where two or more applications have been submitted for different portions of it.

The essence of the decisions revolves around the RTC's consideration of all those matters stipulated in subsection 254(3) and any other factors it considers to be in the public interest. With respect to the criteria set out in subsection 254(3) the Committee generally found, for those applications given approval, that:

1. The line had incurred actual losses;
2. Alternative rail and highway services were available;
3. The effects of abandonment on other lines or carriers would be minimal and the alternative services and elevators would have sufficient capacity to handle any traffic diverted by abandonment;

4. Some shippers would suffer inconvenience but alternative services were available within a reasonable distance and the effect on the economy of the area would be minimal;
5. The effect on transportation and maintenance-of-way employees would be negligible as there were no operational changes which would make retention of the line feasible; and
6. No significant increases in grain or agriculture production, or possible industrial development were forecasted for the area for the future.

With respect to other matters in the public interest, it is noted that the RTC gave consideration where applicable to the recommendations of the Hall Commission and later reports.

Though the decisions issued in 1975 reflected the general approach outlined above, they did not contain a point-by-point discussion of the criteria as was the case for those decisions issued in the years 1977 to 1979. Such a point-by-point discussion was not really required, however, since the lines being dealt with carried no traffic and their abandonment was not disputed. The usual approach of the RTC in the 1975 decisions was to list the eight criteria of subsection 254(3) and then to make a statement like the following:

> These are legal yardsticks against which we must measure the testimony presented here today. The evidence which was adduced in support of this unopposed Application was not contradicted by any person wishing to persuade us that this line should be retained. We accept the evidence we have heard here this morning and we think it describes the type of branch-line which the Railway Act empowers us to order abandoned. We have heard applications of this type in all three Prairie Provinces over the last several weeks and, from time to time, the Governments of these Provinces have appeared before us and have made known their respective concerns in the matter of branch-line abandonments. They have filed briefs and, in some instances, have given evidence dealing with particular applications. However, we were requested to make reference to their respective submissions when considering each case and we have done that in the present Application. We find nothing in the present Application which would offend against any of the general representations made to us by the Government of this Province. Accordingly, we grant the Application, and an Order will issue giving effect to this Decision.*

With regard to the branch-line proceedings heard by the RTC in 1980, it is worth noting that of the applications heard until October 1980, three have received outright approval. In these cases, the Western Division of the CTC issued only bench decisions and orders and, since written decisions are not available, an analysis of these cases is not possible.* However, after a review of the transcripts of these hearings, it appears that these lines were of the same nature as those to which the general findings discussed above apply.

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* Decision, October 15, 1975 - Application by CN to abandon portion of Carman Subdivision, p. 3.

3.3.2 Applications Which Have Been Denied in Full or Part

To obtain a more complete picture of the RTC's approach to branch-line abandonment cases it is also necessary to look at the five applications to date which have been denied in full or in part.

The first of these was in 1975 when part of an application to abandon a portion of CP's Rosemary Subdivision in Alberta was not approved.** The segment of line in question served a grain elevator for which attempts were being made to achieve economic viability. Removal of the line would have meant that the elevator could not have survived and, thus, it was decided to keep that portion of the line. However, when the statutory five-year review for the denied portion of the application was conducted, in 1980, approval for abandonment was granted because the elevator had been closed.***

The denials with respect to the other four applications were issued in 1980 by the Western Division of the CTC (formed in 1979). Two of the applications were for adjoining portions of CP's Shamrock Subdivision and a third was for portions of CN's Gravelbourg Subdivision. Since these lines were in the same area or adjoining areas of Saskatchewan, it was decided to consider them together in one decision, a procedure which is provided for in subsection 254(2).****

PRAC had previously examined the Shamrock and Gravelbourg Subdivisions and recommended that a portion of the Gravelbourg Subdivision be added to the Basic Rail Network, and connected to CP's Expanse Subdivision serving Moose Jaw. It had recommended that the remainder of the Shamrock and Gravelbourg Subdivisions, i.e., the lines considered in the decision, be abandoned.

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* Order No. R-30629 WD, March 25, 1980 - Application by CP to abandon portion of Matador Subdivision.

Order No. R-30630 WD, March 26, 1980 - Application by CN to abandon portion of White Bear Subdivision.

Order No. R-30834 WD, May 5, 1980 - Application by CP for reconsideration of application to abandon remaining segment of Rosemary Subdivision.

** Decision, 1975, CP - Rosemary Subdivision.

*** Order R-30834 WD, 1980, reconsideration of application for abandonment of Rosemary Subdivision.

**** Decision, 1980 - CP and CN: Shamrock and Gravelbourg Subdivisions abandonment.

In the Western Division decision, it was found that the portion of the Gravelbourg Subdivision which had already been assigned to the Basic Network on the basis of the PRAC recommendations, should have direct access (without backhauls) to Moose Jaw and Swift Current. Thus it was decided to keep and connect two adjoining portions of CN's and CP's lines which would also permit access to Swift Current.

Four other segments of the line in the two subdivisions were also dealt with in the decision. It was decided to retain one segment of CN's line indefinitely in order to provide service to that portion of CN's line initially assigned to the Basic Rail Network. Its future abandonment was made conditional upon the Basic Rail Network section being upgraded and connected to CP's Expanse Subdivision. The one remaining portion of CN line was given approval for abandonment. For the two other segments of the CP line, it was decided that one handled sufficient traffic to justify its retention but not its inclusion in the Basic Rail Network, but for the other segment no decision could be made because more specific cost and revenue data were required to determine if an actual loss had been incurred.

The fourth application for which a denial was issued pertained to CN's Carlton Subdivision, in the Province of Saskatchewan, which had been recommended by the Hall Commission for abandonment in 1981. In a report prepared by commissioner McDonough of the Western Division and confirmed by order, it was recommended that a significant portion of the line be retained and included in the Basic Rail Network. The findings of this report explained the reasons for this decision:

> The area is one of great potential. Satisfactory volumes appear to be available for rail haul in the short and long term.
>
> Recent trends of reduced car handling are to no small extent attributable to the downward spiral of line and service deterioration. Significant traffic volumes have been directed to other points because of extended line closures and/or elevator congestion.
>
> In the short term, rail volumes could be increased through elimination of the situations which result in diversion to alternate sites. The pulse crop farming, which is already quite extensively developed, constitutes another source of traffic in outbound shipments and inbound chemicals and fertilizer, which could be moved by rail if service was reliable and attractive. The evidence shows that this market will probably experience further significant impact on the economic aspect of the line. In order to enjoy this traffic the railway must provide reliable year-round service.
>
> In the long term modified farming techniques which are being actively explored by area producers, indicate that production increases of great magnitude are probable. These should better allow the producers of the area to participate in the demand increases forecast for the next ten years.*

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* Order No. R-31538 and Report, October 22, 1980 - Application by CN to abandon portion of Carlton Subdivision, p. 16.

The Shamrock and Gravelbourg Decision, reviewed above with respect to denials is of further interest because of its discussion of the impact of Prairie rail-line abandonment on communities, trucking costs and road costs. The decision reviewed the various studies done between 1968 and 1976 on the subject of community impact. The main observation offered in the decision with respect to community impact and the studies is found in the following quotation:

> The evidence from census trends and from studies of prairie branch-line communities points to a general decline in the population of these communities as well as a diminution of their importance as trade centres. There is no strong evidence pointing to the grain handling function as the key element which could determine a community's sense. Indeed, the Hall Commission reached much the same conclusion: "...the Commission was unable to locate any study which indicated that the viability of a community which was already declining would be saved by the retention of the railway."[7] There may be individual communities where grain handling will determine the future of that community but the evidence does not suggest that the declining trend observed in most communities would be reversed by changes to the grain handling functions.
>
> [7] Government of Canada, Hall Commission, *Grain and Rail in Western Canada, Vol. I, The Report of the Grain Handling and Transportation Commission*, Ottawa, 1977.*

It was also observed that the causes of the decline in rural communities came from outside the community and were mainly due to such factors as migration from rural to urban areas, centralization of social services, improved roads and increased motor vehicle ownership. Finally it was noted that retention of grain handling facilities may slow community decline but it did not appear that such action would reverse the trend.

The decision next examined the two alternative methods of using either total or variable costs to determine the increase in trucking costs when a delivery point is closed. Two multiple regressions were presented and their results were used to demonstrate how the increase in either total or variable costs would be calculated.

The regression equations were also used to compute the increased trucking costs which would be incurred by abandonments of the Shamrock and Gravelbourg Subdivisions. The result was compared to an estimate submitted by the Saskatchewan Transportation Agency and found to be less than one-half of their figure.

Finally, the decision looked at the impact of delivery-point closure on road costs. It was pointed out that there was a consensus that road costs would increase if the line were abandoned. However, the expected increase submitted by the Saskatchewan Transportation Agency for the Shamrock and Gravelbourg Subdivisions was found to be overestimated. Engineering advice was sought from Transport Canada and Public Works Canada and several of the basic assumptions underlying Saskatchewan's estimate were seriously questioned.

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* *Decision*, 1980 - CP and CN: Shamrock and Gravelbourg Subdivisions abandonment, pp. 16-17.

3.4 Nonprairie Branch Lines

This section presents an examination of the decisions made on applications for abandonment of branch lines in Nonprairie Provinces. In general the lines considered in these cases have fallen into disuse because of improved highway and truck services and/or the disappearance of industries which once supplied traffic. The applications for these lines come under the same statutory provisions that apply to Prairie branch lines.

Table 3.4 presents the number of Nonprairie branch-line applications decided on during the years 1967 to 1980 along with the mileages approved or denied. The majority of applications were approved but in ten instances denials in full or part were issued and, in one case, the application for abandonment was dismissed.

With respect to the lines approved for abandonment, they were, for the most part, either not in use or they handled an insignificant amount of traffic. It was found that on their abandonment, adequate alternative forms of transport would be available and that the effect of their abandonment on other carriers or the economies of the area in which they were located would have been minimal. Finally, it was held that there were no foreseeable resource or industrial developments that would have required the use of these lines.

Table 3.5 presents the ten cases in which full or partial operation of a line was ordered continued. It is seen from the Table that there were two main reasons for the retention of a line. In some cases only one of them was a factor while in others both played a role in the decision. One of the reasons was that the economic impact of the abandonment on shippers and their region would have been too large. Where this was important it was found that the effect of increased trucking costs on the current rail users would have been too adverse and in some instances would possibly have placed their businesses in jeopardy.

A factor which contributed to the detrimental economic impact in some cases and which also had to be considered as one of the items under subsection 254(3) was the adequacy of highways in the region. In three cases the inadequate development of highways was shown to be of some importance. These were: CP's Kaslo Subdivision in B.C.* where it was found that the physical limitations of the highway made truck transport impractical; CP's Temiscaming — Ville-Marie Subdivisions in Québec**

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* Decision, September 19, 1975 - Application of CP to abandon operation of Kaslo Subdivision from Denver Canyon to Nakusup.

** Order No. R-30211 and Report, January 23, 1980 - Application of CP to abandon portions of the Temiscaming Subdivision and the Ville-Marie Subdivision.

Table 3.4

NONPRAIRIE BRANCH-LINE ABANDONMENT

Year	**Cases Approved**		**Cases Denied in Part**			**Cases Denied**		**Total Mileage**	
	Number	**Mileage**	**Number**	**Mileage approved**	**Mileage denied**	**Number**	**Mileage**	**Approved**	**Denied**
1967	—	—	—	—	—	1	12.08	—	12.08
1968	—	—	—	—	—	—	—	—	—
1969	—	—	—	—	—	—	—	—	—
1970	—	—	1*	9.40	9.50	—	—	9.40	9.50
1971	1	60.90	—	—	—	—	—	60.90	—
1972	—	—	—	—	—	—	—	—	—
1973	—	—	—	—	—	—	—	—	—
1974	1	7.96	—	—	—	—	—	7.96	—
1975	1	7.40	1**	22.04	9.60	1	31.20	29.44	40.80
1976	6	80.75	1	3.08	2.40	1	21.92	83.83	24.32
1977	3	40.50	1	3.70	20.10	1	9.50	44.20	29.60
1978	4	213.50	—	—	—	—	—	213.50	—
1979	3	54.70	2***	42.72	34.28	1	1.37	97.42	35.65
1980	3	25.33	2	58.60	18.10	1	73.20	83.93	91.30
Total	22	491.04	8	139.54	93.98	6	149.27	630.58	243.25

Notes:

* The Eganville Subdivision of CP Rail was listed in the table in three different years. In 1970 permission was given to abandon a portion of the line while the remainder was ordered continued in operation. This latter segment was considered again in 1977 and was ordered continued in operation for another two years to give time for the traffic to materialize that those in opposition to the application said was available. The traffic did not materialize and approval for abandonment was granted in 1980.

** The application for the abandonment of CN's Penetang Subdivision was considered in two parts in order to allow time to update information on one portion of the line under consideration. The case, however, was only entered in the table once.

*** CP's Piles Subdivision was listed under Cases Denied in Part because permission for abandonment of a portion of the line was conditional. CP would be allowed to abandon the segment of the line in question in one year unless the RTC was satisfied that construction of an industrial park would materialize.

Table 3.5

NONPRAIRIE BRANCH-LINE ABANDONMENT CASES
WHERE CONTINUED OPERATION OF LINE WAS ORDERED

Case	Province	Railway	Subdivision	Date	RTC Issued Documents	Decision	Reasons for Continued Operation
1.	B.C.	CP	Kaslo (31.2 miles)	Sept. 19, 1975	Order and Decision	- continue operation	Shippers are captive; though alternative transport exists, goods cannot be properly or economically moved by them.
2.	B.C.	CN	Saanich (1.37 miles)	Mar. 30, 1979	Order and Decision	- continue operation	Forecast traffic provides potential to approach profitability and rail customers should not have to incur increased transport costs.
3.	Ont.	CP	Eganville (18.9 miles)	Nov. 16, 1970	Order	- continue operation of 9.5 miles and abandon remainder	No reasons given.
				Jan. 11, 1977	Order and Report	- continue operation of 9.5 miles for two years then review	Those opposed given chance to show traffic is there.
				June 16, 1980	Order and Report	- abandon 9.5 miles	Traffic did not materialize.
4.	Ont.	CN	Penetang (31.84 miles)	Feb. 25, 1975	Order and Report	- continue operation of 16.35 miles and abandon 15.29 miles not used	Continue operation of portion which is used until further hearing can be held to update information on line.
				July 14, 1975	Order and Report	- retain 9.6 miles and abandon 6.75 miles	Abandonment of all 16.35 miles would place burden on sole user of line and could see pulpwood of area wasted if it becomes too costly to truck to alternative point. Continued operation of 16.35 miles would place burden on CN and ultimately taxpayer. Thus decision was to share burden by continuing operation of only a portion of the line.

Table 3.5 (cont'd)

Case	Province	Railway	Subdivision	Date	RTC Issued Documents	Decision	Reasons for Continued Operation
5.	Québec	CP	Tring (56.7 miles)	Feb. 28, 1979	Order and Report	- continue operation of 31.5 miles and abandon 25.2 miles which received negligible traffic	Main reason is that abandonment would cause economic impact on farmers because of the increased costs that would occur for the delivery of feed grain.
6.	Québec	CP	Piles (20.3 miles)	Aug. 17, 1979	Order and Decision	- continue operation of 2.78 miles for one year and abandon 17.52 miles once joint running rights obtained from CN and structures complete which would allow transfer of trains from CP tracks to CN	2.78 miles to be abandoned Sept. 1, 1980, unless RTC is satisfied industrial park will materialize.
7.	Québec	CP	Temiscaming and Ville-Marie (76.7 miles)	Jan. 23, 1980	Order and Report	- continue operation of 66.3 miles and abandon 10.4 miles not used	There appears to be a market for rail services in the area for forestry and mining products which is perhaps large enough to bring about profitability. External benefits for continued operation were also cited. These included the possibility that trucking may lose its competitive advantage due to increased energy costs, that the road system of the area is not developed and there is evidence of congestion and, that abandonment of the line would adversely affect this isolated and remote region and the other regions of Québec where its supliers and markets are located because traffic would shift to Ontario lines which would in turn affect trade patterns.

Table 3.5 (cont'd)

Case	Province	Railway	Subdivision	Date	RTC Issued Documents	Decision	Reasons for Continued Operation
8.	N.B.	CN	Stanley Spur (5.48 miles)	Dec. 1, 1976	Order and Report	- continue operation of 2.4 miles and abandon 3.08 miles	Continue operation because: sawmill shipper would experience considerable increase in transport costs from abandonment; there is good potential for increased sawmill shipments and as a result increased rail revenues and rail costs will be reduced from abandonment of the other portion of line.
9.	N.B.	CP	Shore Line (23.8 miles)	Feb. 14, 1977	Order and Report	- continue operation of 20.1 miles and abandon 3.7 miles	Potential traffic in future warrants continued operation.
10.	N.S.	CN	Caledonia (21.92 miles)	May 31, 1977	Order and Report	- continue operation of line	Continue operation mainly because of economic impact abandonment would have on the area but there is also potential for an increase in traffic.

where congestion on the roads and inadequate highway development were mentioned by the RTC with regard to external benefits to be derived from line retention and CN's Stanley Spur of the Nashwaak Subdivision* in New Brunswick where it was shown that seasonal weight limitations on a road would further increase trucking costs.

The second basic reason for retention of a line was that future traffic prospects could be sufficient to render the lines profitable. In most cases the growth in traffic was foreseen to come from increased volumes shipped by past users of the line, though in the case of CP's Temiscaming — Ville-Marie Subdivisions in Québec and its Shore Line Subdivision in New Brunswick new sources of traffic were expected.

One matter that the RTC must give consideration to in its decisions is the cost of restoration of the lines since quite often maintenance had been deferred and the lines were in need of considerable improvement. In several instances it was stated that the railways had overestimated rehabilitation costs. The following quotation from Commissioner Gray's report on CN's Stanley Spur illustrates the approach taken by the Committee towards rehabilitation work:

> In the evidence presented by the applicant it was stated that, "If the CTC ordered continued operation of the line, we are at a stage where substantial capital expenditure would be required to restore it." and "We estimate a capital expenditure would be $393 000, and the annual cost of maintenance would be $22 550." While it is realized that the approach used by CN to evaluate the line is based on "restoration to standard", such a figure grossly overstates the needed repair work.
>
> The line does not require the installation of five miles of 100-pound partly worn rail for the type of traffic handled. In Exhibit CN-2 it is clearly indicated by the railway that over four miles of the existing rail is 80 and 85-pound rail in fair condition. Even if the line were profitable it is unlikely that such a rail replacement program would be undertaken. Similarly it is unlikely that the other work relating to ties, ballast and culverts would be progressed to the degree indicated by CN. Furthermore, the simple prorating of upgrading costs from Stanley Junction to Sutherland is even more misleading as the condition of the roadbed is better over the line to Sutherland than beyond and would thus require comparatively lower restoration work.
>
> It would appear that the CN position is to maximize its restoration costs and thus discourage retention of the line. What is required at abandonment hearings such as this is a realistic evaluation of the necessary upgradings costs which would be expected in say the next five-year period. Such a document would prove valuable as the time span would also correspond with the statutory requirement under Section 254(5) of the Railway Act to review the application within five years if it were ordered continued now. The present statement is of little use whatsoever.

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* Order No. R-23987 and Report, dated December 1, 1976 - Application of CN to abandon the Stanley Spur of the Nashwaak Subdivision.

There is little doubt that some tie replacement, ballast work and culvert repairs would have to be undertaken during the next few years if the line were retained to Sutherland.*

The final matter for discussion in this section is the dismissal of CN's application for abandonment of its Témiscouata Subdivision running between Rivière-du-Loup, Québec, and Edmundston, New Brunswick.** The RTC must determine that a line is uneconomic before it can go on to decide whether it should be abandoned or retained. The RTC concluded with respect to the Témiscouata Subdivision that CN had not really attempted to make it economic and that the RTC could not determine if the line was uneconomic until such an effort had been made. Furthermore, the RTC did not feel that CN had met its obligation under subsection 262(1) to furnish adequate and suitable accommodation on the subdivision.

The application was therefore rejected and CN was ordered to make improvements to the line and continue its operation. The RTC stated:

> In view of the evidence submitted at the hearings held at Rivière-du-Loup and at Notre-Dame-du-Lac, the Committee is of the opinion that CN has not established that the Temiscouata branch-line is an uneconomic operation. The testimony heard indicates that instead of encouraging rail transport, CN has seemed to discourage it, in a number of ways: First, since 1950, it has let the track deteriorate and depreciate, and since 1977, CN has operated only the Cabano-Edmundston segment, a distance of 34.3 miles of the 73.20 under study. CN explains that it was washouts which caused this interruption in service, but it has done nothing in two years to correct the situation. To quote Mr. Godbout, the Mayor of Rivière-du-Loup: "So how can you use a railway that isn't running? When you don't have a car, you walk..."
>
> In addition, a number of people complained that the rates offered were not competitive. CN explains that lower rates are available only on larger carloads. On the other hand, a number of shippers say that the railway has to be repaired, particularly between Edmundston and Cabano, before they can put heavier loads in the cars. Thus, shippers cannot be given a more reasonable rate and CN attracts very little traffic. The information submitted to the Committee relative to the CN marketing service shows that there has been very little positive effort on the part of CN in this field. For all these reasons, the Committee concludes that CN has not tried to make the Temiscouata Subdivision economic. CN must operate a branch line on the basis of the commercial principles which it applies to its other business with such success. Only then can the Committee decide whether the line is economic. For these reasons, the Committee hereby adopts the conclusion reached by the Committee in the E & B case:

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* Ibid., p. 6.

** Decision, April 18, 1980 - Application of CN to abandon portion of the Témiscouata Subdivision. The Témiscouata case is presently under appeal at the Federal Court of Appeal.

> "Until we have evidence before us that the service is being properly run so far as it is within the power of CP Rail (in our case CN Rail) to do so, it is impossible for us to make the determination whether the service is uneconomic and is likely to continue to be uneconomic." (1970-1971) CTC 101
>
> Moreover, the Committee believes that the evidence demonstrates that the railway company has not fulfilled the obligation provided in section 262(1) of the Railway Act by not furnishing adequate and suitable accommodation for the carrying of freight on its railway between Rivière-du-Loup and Edmundston. Local industry, which is currently in full expansion, needs rail service if it is to consolidate its position in the face of competition from other industries enjoying better transport service. However, the testimony of a number of the region's indus-trialists during the hearing has convinced the Committee that, in its present state, the service offered by CN is inadequate. Local industry cannot really enjoy a competitive position with rail service like that which is presently offered.
>
> The Committee therefore rejects the application by the Canadian National Railways to abandon the operation of the Temiscouata subdivision.*

3.5 Summary

The majority of branch-line abandonment decisions dealt with lines situated in the Prairie Provinces. Three factors were identified as the main causes that led to these lines being considered for abandonment. They were: the overbuilding of the western rail network prior to the mid-1930's; the Crow's Nest rates becoming non-compensatory; and the negative impact of truck competition on branch-line traffic and on the railway's ability to use value-of-service pricing to support less profitable services.

To properly understand the RTC's branch-line decisions, it is necessary to know the constraints within which the Committee had to operate. Prior to 1975 no branch-line decisions were issued because all but a few lines had been protected from abandonment by the federal government. The small number of lines that were left unprotected between 1967 and 1973 were not dealt with because of the priority given to such matters as the Costing Order, passenger-train discontinuance and plans for the rationalization of the grain handling and transportation system. Subsequent to 1974 there were several events which influenced the pace at which the Committee could proceed and nature of the branch line that would be considered in the decisions. These events included the Hall, PRAC and Neil Inquiries into the disposition of branch lines. The inquiries were accompanied by abandonment freezes which restricted the ability of the RTC to proceed. Furthermore, all the lines considered by the RTC, except for the 525 miles left unprotected at the end of 1974 had been subjected to the scrutiny of one or more of the inquiries and had not been held to be of enough importance to be added to the Basic Rail Network. Instead, they had been recommended to be considered for abandonment. An examination of the decisions shows that the lines the Committee dealt with were either not in use or offered service on an "as and when" required basis and handled a low volume of traffic. In addition many of the lines were in poor physical condition. In short, the Committee was effectively prevented from functioning prior to 1975 and subsequently it was faced by strong constraints.

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* Decision, 1980 - CN: Abandonment of Témiscouata Subdivision, p. 22.

It is thus not unexpected that all but five applications were given full approval. The Committee found, in general, that alternative highway and rail services were available and that abandonment would have a minimal effect on other lines and carriers. It determined that other services and elevators had the capacity to handle traffic from the lines not retained. It recognized that shippers would suffer inconvenience but noted that alternative services were available within a short distance. It judged that abandonment would have only a minimal impact on the economy of the area and a negligible effect on railway employees. Finally, it foresaw no significant increases in agriculture or industrial production which would make retention of the lines worthwhile.

There were five exceptions where applications were denied in part or in entirety. The first one occurred in 1975 when the RTC decided to retain a portion of one line so that a grain elevator would have the opportunity to try and achieve economic viability. The other four exceptions occurred in 1980 and were contained in two decisions issued by the Western Division of the CTC. One decision dealt with CP's Shamrock Subdivision and CN's adjoining Gravelbourg Subdivision. The lines under consideration had all been recommended for abandonment by PRAC. In large part the three applications, two by CP and one by CN, were denied. The various reasons given for the denials included, the elimination of a backhaul, the provision of service until a portion of the Basic Rail Network was improved and the presence of sufficient traffic to justify retention.

The other decision pertained to CN's Carlton Subdivision. The line in this instance had been recommended for abandonment by the Hall Commission. The application was denied in full on the basis that sufficient traffic was available and that it would move over the Carlton Subdivision if needed improvements to the line and service were made. In addition, possible growth in traffic stemming from potential increases in agricultural production was cited in support of retention of the line.

It was not possible to determine if these four recent exceptions represented a change in approach. To make such a determination would have required a number of earlier denials with which to compare.

Finally, with respect to Prairie branch lines, it was noted that the Shamrock and Gravelbourg decision deserved attention because of the discussions it contained on the impact of abandonment on communities and the costs of trucking and road improvements.

There were, in addition to the Prairie cases, a number of decisions which pertained to Nonprairie branch lines. The lines in these cases had experienced little use because of improved highway and trucking services and/or the death of industries that at one time provided the traffic. There were ten cases in which full or partial operation of a line was ordered continued. The two main reasons given for ordering the lines continued were that the economic impact of abandonment on the communities served would be too significant and/or there was the potential of future traffic increases which could make the line viable.

There were also two items of additional interest with respect to the Nonprairie branch-line decisions. One of them was that on several occasions, the RTC pointed out to the railways that they had overestimated the cost of restoring a line. The other was the dismissal of CN's application for its Témiscouata Subdivision. The application was rejected on the grounds that CN had not made the efforts necessary to make the line viable and therefore the Committee could not make the determination if the line was uneconomic.

Chapter 4

REMOVAL OF STATION AGENTS AND THE USE OF TRUCKS BY RAILWAYS

There remain two subjects to be discussed with regard to the rationalization of services. They are the removal of station agents and section 262 of the Railway Act as it concerns the use of trucks by the railways to accommodate traffic.

4.1 Removal of Station Agents, Caretaker-agents and Caretakers

The continued growth of highway competition through the 1950's brought about the demise of wayfreight train services to the smaller communities of Canada. In its place, the railways adopted the railhead principle whereby express and less-than-carload traffic previously carried by the wayfreight were transported from major railheads to destination by truck. This integration of rail-truck service was accompanied by the consolidation of express and less-than-carload traffic services.

CP and CN also began to experiment in the early 1960's with the centralization of the services performed by station agents in the handling, waybilling and accounting for express, less-than-carload freight, and carload freight. By changing the organization of services, the railways hoped to compete more effectively with trucking and at the same time to realize cost reductions. Centralization at that time was made technically possible by the application of modern data processing equipment and the widespread availability of good telephone service.

The central organizations, which were named Customer Service Centres by CP, and Master Agencies, initially, and later, Servocentres, by CN, were set up so that specialized departments carried out the various duties previously performed by the local station agent. In addition to billing and accounting, the central units also became responsible for telecommunications and passenger sales. Toll-free Zenith numbers were established with the centres. The switchboards at the centres were to be staffed 24 hours a day, seven days a week, and it was pointed out that this was an improvement over the local agent who was only available eight hours a day, five days a week. Furthermore, it was noted that the customer received better service because it was now possible to deal directly over the phone with an expert in the customer's area of concern.

Personal contact with the customer was maintained through mobile representatives who travelled over assigned routes meeting with customers to assist them in obtaining information, placing orders, completing bills of lading, settling accounts and claims, rectifying complaints and carrying out other railway business. Finally, on-hand agents, who were usually local businessmen, were appointed by the railways where it was considered necessary to have a local representative to handle express and less-than-carload shipments. Where local truck delivery was provided, the premises of these local agents also acted as a return depot for uncompleted deliveries. The on-hand agents were to be visited regularly by the mobile representatives as part of their job in serving customer needs.

The local station agent, who had traditionally been the small communities' only source of contact with the railway, became redundant with the introduction of these centres. Service was now being provided from a central point and, at best, all the line agent could do was to act as a telephone intermediary between the customer and the centre. Therefore, the railways wanted to remove the station agents — many were to be provided jobs in the new system of service — but before this was possible regulatory approval was necessary. The first applications by CP and CN for the removal of station agents associated with the opening of central agencies were approved by the Board of Transport Commissioners in 1965. Since then many similar requests have been granted by the RTC.*

The requirement that a railway obtain approval from the RTC before closing a station or removing employees is set out in section 120 of the Railway Act. It states:

> 120. The company shall not, at any time, make any change, alteration or deviation in the railway, or any portion thereof, until the provisions of section 119 are fully complied with, nor remove, close, or abandon any station, or divisional point nor create a new divisional point that would involve the removal of employees, without leave of the Commission; and where any such change is made the company shall compensate its employees as the Commission deems proper for any financial loss caused to them by change of residence necessitated thereby. R.S., c. 234, s. 182.**

With respect to regulations governing closings and removals, General Order No. 0-2 which was in force until August 31, 1978 stated among other things that:

> 1. Railway companies subject to the jurisdiction of the Board shall not remove any regular station agent, caretaker-agent or caretaker without leave of the Board...***

The RTC replaced General Order No. 0-2 with a new set of procedures which allowed for the changes that had taken place and permitted the RTC to ensure that the railways continued to provide service at least equal to that of the station agent. These procedures, designated P-5130-2,* extended the requirement of RTC approval to the removal of employees or on-hand representatives who had been assigned the duties of station agents at the time that a central agency was created.

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* The Board had previously dealt with applications for the closing of individual stations but they were not connected with the centralization of services.

** Railway Act, (1970), section 120.

*** General Order No. 0-2, February 1, 1965, The Revised General Orders of the Board of Transport Commissioners for Canada, 1965.

It is observed that the RTC was not being asked directly to approve the creation of a central agency when an application to remove agents and/or close stations was made. The creation of one of these central units was totally within the discretion of railway management. The RTC, however, in deciding on the removal of agents and stations, was concerned that, once they were gone, there should be adequate and suitable accommodation for the receiving and loading of all traffic offered for carriage upon the railway, as required by subsection 262(1) of the Railway Act (see Chapter 2).** Furthermore, subsection 262(3)*** of the Act gives the RTC the power to order a railway to provide the necessary accommodation if it is found to be lacking. Thus, for the railway to be permitted to remove agents and stations, it must be found that there will be adequate accommodation for the traffic once they are gone. It is in this way that the new central unit receives scrutiny. Furthermore, the requirements of section 262 are continuous and if in the future the RTC finds, as the result of a complaint or its own monitoring, that the accommodation provided by a railway is lacking, it may order the necessary improvements.

With few exceptions, the RTC has, in its deliberations, approved the removal of station agents, caretaker-agents or caretakers and the closing of stations.**** It has generally found that the level of service to be provided by the centralized units would be adequate and that service would be equal to or better than that provided by agents.

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* P-5130-2, August 31, 1978, Procedure respecting applications pursuant to section 120 and 129 of the Railway Act.

** Railway Act, Revised Statutes, 1970, subsection 262(1).

*** Ibid., subsection 262(3).

**** One of these exceptions was the RTC's denial in February 1969 of CN's application to remove the agent and station from Forfar, Ontario as part of the Belleville Master Agency Plan. The RTC, in one case to date, has also denied approval for the removal of on-hand agents. An application, as was pointed out in the text, is now required for the removal of on-hand agents who have been established in response to the authorized removal of agents. In August of 1980, the RTC refused one such application by CN for removal of four on-hand agents in Cape Breton.

4.2 Section 262 of the Railway Act and the Use of Trucks by the Railways to Accommodate Traffic

Starting in the 1950's, the railways found that highway competition made it necessary to switch from wayfreight trains to trucks for the carriage of express and less-than-carload traffic. The substitution of trucks by the railway brought with it the question as to what responsibility a railway had to maintain service. The RTC provided an answer to this question in its decision of October 1970, with respect to the removal of agents, caretaker-agents and caretakers in the Moose Jaw Division of CP:

> The Canadian Pacific Railway is free, of course, to make any arrangements open to it under the law for the carriage of traffic. The Railway may carry and deliver by a mode other than rail to points along its railway lines but when it does so the obligations imposed on it by section 315 (now section 262) of the Railway Act remain.
>
> If, for any reason, the Railway found itself unable to provide by other means of transport a system adequate for the carriage and delivery of traffic and responsive to the obligations imposed by section 315, the Committee's responsibility would be to direct the Railway to reinstate rail service.*

The adequacy of accommodation supplied by Canadian Pacific Limited in the Province of Saskatchewan became the subject of an RTC inquiry and decision after Canadian Pacific Transport (CPT) ceased operations on its intraprovincial truck routes in Saskatchewan in April of 1976. The company did not renew its intraprovincial licences for these routes because of the losses it was sustaining on them. Service to local communities in the province was subsequently provided in three ways: by independent truckers who already held licences to operate on the routes in question; by CPT carrying non-carload traffic on these routes for which it held an extraprovincial licence; and by independent interline truckers who obtained temporary licences to operate on an interim basis on some of the routes.

Previous to its withdrawal of intraprovincial services in Saskatchewan, CPT had ceased intraprovincial operations in Alberta and also in Manitoba with the exception of one route. This had all been done without any protests being made to the RTC. Such, however, was not the case with regard to Saskatchewan. Both the Government of Saskatchewan and the public made representations to the RTC. The Committee initiated a monitoring of the service on these routes from which CPT had withdrawn and then established an inquiry to determine the adequacy of accommodation provided by CP in Saskatchewan.

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* Decision, October 30, 1970 - Application of CP for authority in respect of proposed Customer Service Centre at Moose Jaw to remove 43 agents, 1 caretaker-agent and 22 caretakers from stations on Moose Jaw Division, pp. 11-12.

Commissioner Magee submitted his report on the inquiry in February of 1977* and the RTC issued a decision in March of 1977.** The RTC accepted the findings of his report and adopted his conclusion that Canadian Pacific was meeting the responsibilities of service placed upon it by section 262 of the Railway Act. The RTC pointed out that most express and small goods traffic travelled by truck, that shippers appeared to be satisfied by this type of service and that the public interest was well served by this state of affairs. It went on to note that its interpretation of the requirements of section 262 has made allowance for the shift of small good traffic to trucking. However, the Committee pointed out, after taking these changes in the service into consideration, that it was still concerned that the railways continue to meet the obligations placed on them by section 262.***

The RTC held that the service of the independent truckers was such as to permit CP to fulfill its responsibilities under section 262. It stated:

> In the matter of the provision of trucking service to the rural communities in relation to the responsibilities of CP Rail under Section 262 of the Railway Act, the Committee, by its concurrence, adopts Commissioner Magee's conclusion that independent trucking firms in Saskatchewan are — as in other provinces — "a means of transport other than rail adequate for the carriage and delivery of traffic and able to respond in a manner that permits Canadian Pacific Limited to discharge adequately its obligations under section 262 of the Railway Act." The Committee reminds CP Rail that its obligation continues under the statute and is discharged by the use of the other mode only so long as the Committee is satisfied as to its adequacy. We are mindful of the conclusion in the Report that it is not possible at this stage to make a final assessment of the performance of every individual trucker on every individual route so long as some of the truckers continue to operate under temporary licences. The temporary licence is obviously a barrier to satisfactory credit arrangements and to the provision of all of the vehicles and terminal facilities that would normally be taken in stride by a permanently-licenced operator, receiving adequate remuneration for services performed.****

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* John Magee, Commissioner, Report to the Railway Transport Committee in the Matter of Section 262 of the Railway Act, Chapter R-2, Revised Statutes of Canada, 1970, Respecting Accommodation for Traffic to be Furnished by Canadian Pacific Limited in the Province of Saskatchewan, Ottawa: Canadian Transport Commission, February 1977.

** Decision, March 21, 1977, In the matter of section 262 Railway Act, Chapter R-2, Revised Statutes of Canada, 1970, respecting accommodation for traffic to be furnished by CP Limited in Saskatchewan.

*** Ibid.

**** Ibid., p. 4.

Finally, the RTC expressed its hope that the Highway Traffic Board of Saskatchewan would be able to process quickly the applications for permanent licences of those truckers who, under temporary licences, were providing services where CPT had once operated.

Chapter 5

RAILWAY RATES

5.1 History

An examination of the history of railway rates shows that concern has centred more on the setting and regulation of freight rates than of passenger tariffs. For this reason the bulk of this chapter is devoted to freight rates with the discussion of passenger tariffs being left to the final section.

Railway freight rates have been an issue in the public arena dating back to around the time of Confederation and they remain so today.* Complaints against the structure and level of rates, the response of government in the form of royal commissions and legislation, and the decisions of various governmental bodies appointed through time to regulate rates are all part of a long and complex history of freight rates. It is sufficient for this study to briefly review a part of this history from the appointment of the Royal Commission on Transportation in 1959 to the present.

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* The discussion presented in this section makes extensive use of the following documents:

Howard J. Darling, "Transport Policy in Canada: The Struggle of Ideologies versus Realities", Issues in Canadian Transport Policy, Toronto: MacMillan of Canada, 1974.

T.D. Heaver & J.C. Nelson, Railway Pricing under Commercial Freedom: The Canadian Experience, University of British Columbia, December 1976.

John R. Baldwin, "The Canadian Experience: Increased Rail Rate Freedom and Increased Subsidization as Successors to Rail Cross-Subsidization", Foreign Regulatory Experiments: Implications for U.S., Washington, D.C.: U.S. Department of Transportation, Federal Railroad Administration, Office of Policy & Program Development, November 1977.

A.W. Currie, Canadian Transport Economics, Toronto: University of Toronto Press, 1967.

H.L. Purdy. Transport Competition and Public Policy in Canada, Vancouver: University of British Columbia Press, 1972.

M.A. MacPherson, Chairman, Royal Commission on Transportation, V. I & II, Ottawa: The Queen's Printer, 1961.

A.W. Currie, Economics of Canadian Transportation, p. 40. The author notes that in 1861 Shippers in Ontario were dissatisfied with local rates on flour in comparison with through rates obtainable on the Grand Trunk Railway from Chicago to Portland, Me., and to Boston by boat.

5.1.1 The Royal Commission on Transportation of 1959

The Royal Commission on Transportation of 1959, or the MacPherson Commission, as it is now known, was appointed at the same time as the government moved to stop freight rate increases. There had been a series of horizontal increases starting in 1948 all of which had been strongly opposed by the Western and Maritime Provinces who perceived that they shouldered most of the burden of the increases. The Conservative government, which had strong support from both of these regions, first acted on the horizontal increases in 1958 when it twice delayed and finally did not allow a 15 per cent increase. The government again acted in 1959, when it brought in the Freight Rates Reduction Act to roll back an increase and to provide a subsidy to compensate the railways for the foregone revenues. The MacPherson Commission was then established to find a longer-term solution to the freight rates problem.

The Commission was instructed to inquire into the following: inequities in the freight rate structure; burdens placed on the railways by public policy; ways of accomplishing a more economic and efficient railway system; the question of what assets and earnings of the railway companies in non-railway enterprises should be included in the determination of freight rates and other matters considered to be relevant by the Commissioners.

The MacPherson Commission recognized that circumstances had changed in the transport market. Whereas at one time the railways had operated as virtual monopolies, competition from other modes had gradually eroded most of the railways' monopolistic position. The Commission therefore recommended that the existing regulatory restraints be replaced by the competitive forces provided by the marketplace. The best way to achieve an efficient transport system at a minimum cost was to allow each mode to find its own place. The Commission also made recommendations on the role that competition was to play versus the role of transport as an instrument of national policy. It called for compensation to any mode when a public duty was imposed upon it as a matter of national policy. This was considered necessary in order not to distort the allocative mechanism of the competitive market. In this vein, it was suggested that railway plant and services be rationalized and if such things as unprofitable passenger or branch-line services were to be retained, the railways were to be reimbursed. Without compensation, the railways were placed in the position of attempting to recoup losses through freight rates, especially on those commodities whose rates were least subject to intermodal competition.

The Commission also stated that any assistance provided to particular shippers or regions on a national policy basis should not be disguised as transport subsidies. The specific suggestions with respect to freight rates followed from the general recommendation that competition be substituted for regulation. It was proposed that, apart from the statutory rates on grain and grain products, the railways be free to set rates but there were two provisions. First, rates should not be set below a minimum limit of the direct or out-of-pocket costs of a movement in order to prevent destructive competition with trucking. Second, in cases of significant monopoly, captive shippers should have recourse to maximum rate control which would set an upper limit on the rate equal to the long run variable costs of the movement plus 150 per cent of variable costs. The Commission also recommended that rates be effective on filing in order not to put the railways at a competitive disadvantage.

5.1.2 The National Transportation Act

The MacPherson Commission's reports did not result in immediate legislative change. The rate freeze and the compensatory subsidies to the railways were continued by, first, the Freight Rates Reduction Act and, subsequently, by Appropriation Acts. However, in 1967 the approach set out by the MacPherson Commission was, in the main, enacted into legislation with the passage of the National Transportation Act. The Act, as has been discussed elsewhere in this report, established the National Transportation Policy of an economic, efficient and adequate transportation system making the best use of available modes of transport at the lowest total cost. It also called for compensation to transport undertakings where obligations were imposed upon them as matters of public duty.

In accordance with this policy, specific provisions were inserted into the Railway Act to compensate railways for uneconomic passenger services and uneconomic branch lines as well as for Eastern Flour Rates. It was intended that such subsidies would relieve the railways of the necessity of attempting to recoup the losses for these services through rates on traffic for which they had a monopoly.

With respect to rate regulation, the legislation contained several amendments to the Railway Act which, for the most part, incorporated the suggestions made by the MacPherson Commission. The railways were given freedom to set rates on all traffic except grain products covered by statutory rates with the restrictions that rates be compensatory* and subject to maximum rate control when a shipper was declared captive.** Competitive rates became more attractive relative to agreed charges because the section of the Railway Act dealing with the former was repealed.*** It was no longer necessary to establish the existence of competition or to show that the rates were compensatory by the criteria then used or that they were no lower than necessary to meet competition. These rates now only had to meet the new compensatory requirement of being no lower than variable costs. The position of competitive rates versus agreed charges was also improved by the deletion of the one and one-third rule from the Railway Act.****

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* Railway Act, (1970), section 276.

** Railway Act, (1970), section 278.

*** Railway Act, (1952), section 334.

**** Ibid., subsection 337(2).

When this requirement, that the rates to intermediate points be no greater than one and one-third times the transcontinental rate, was introduced into the Act in the early 1950's, the railways by-passed it by using agreed charges which were governed by the Transport Act.

Another change was the deletion of the several sections of the Railway Act pertaining to undue and unreasonable discrimination in rates or service, and their replacement by section 23 of the NTA.*

One commentary pointed out that this section placed more emphasis on the need to recognize that rates constructed as to take into account specific costs were not discriminatory.** The NTA declared that the Commission must consider —

> 3(a) Whether the tolls or conditions specified for the carriage of traffic under the rate so established are such as to create:
> (i) an unfair disadvantage beyond any disadvantage that may be deemed to be inherent in the location or volume of the traffic, the scale of operation connected therewith or the type of traffic or service involved...***

In addition to the minimum, maximum and section 23 provisions, one other residual rate control was introduced in 1967. A section was added to the Railway Act which protected captive shippers of less-than-carload shipments under 5 000 pounds from an undue advantage of a monopoly situation being taken by the railways when setting its tariff of tolls.**** In such circumstances, the Commission may disallow a tariff of tolls and either require the railways to set a new tariff or prescribe a new tariff itself. However, no power was given here to the RTC to set a maximum rate in relation to variable costs.

Under the Railway Act, prior to the NTA, the Board of Transport Commissioners had the power to postpone the effective date of a tariff while it was under investigation.***** The Board also had the power to disallow a tariff and ask the railways to set a new one or prescribe one themselves.****** The section covering this was repealed giving the railways more freedom to set rates though the requirement that a tariff be filed thirty days before its effective date was maintained.* The deletion of this section also removed the broad power of the Board to review general rate increases.** This change tended to shift attention away from general rate increases to specific rate grievances under one of the residual controls.

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* Ibid., section 317, subsection 319(3), subsection 320(1), sections 322, 323, 324 and 328. It is noted that section 23 was not in the original bill but was introduced during the legislative process.

** J.R. Baldwin, "The Canadian Experience...", pp. 2-33.

*** National Transportation Act, Revised Statutes, 1970, paragraph 23 (3)(a).

**** Railway Act, (1970), section 264.

***** Railway Act, (1952), subsection 328(2).

****** Railway Act, (1952), subsection 328(1).

One other change was made with respect to rates. The three-day filing requirement for rate reductions was eliminated altogether.

5.1.3 Agreed Charges

One area of pricing, in which the railways were free from most constraints prior to 1967 and to which the NTA made no changes, was that of agreed charges. The use of these rates first became permissible with the passage of the Transport Act in 1938. This legislation gave the railways a pricing tool to meet the growing truck competition. The agreed charge, which was negotiated between the railway and shipper, gave the shipper a discount in exchange for committing most or all of his traffic to the railway.

The fact that the legislation covering agreed charges was contained in an act separate from the Railway Act freed these rates from many of the restrictions which applied to other rates. However, it was still necessary to obtain Board approval for the agreed charge. The Board was then required to determine that a competitive rate would not be sufficient for the situation.*** For this reason the rates were not very popular until these requirements were eliminated from the Act in 1955. This change, along with others, was based on the recommendations of the Royal Commission on Agreed Charges chaired by W.F.A. Turgeon.**** Today, the use of agreed charges has declined significantly mainly because the railways do not want to be committed to fixed rates for a fixed period during times of rapid inflation.*****

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* The Supreme Court in a 1975 decision concurred with a Federal Court of Canada decision that the Canadian Transport Commission did not have the power to postpone the effective date of a tariff. However, the court did not agree with the Federal Court of Canada that the Commission had the power to enlarge the period of notice.

** Railway Act, (1952), subsection 328(5).

*** Transport Act, Revised Statutes, 1952, subsection 32(2).

**** W.F.A. Turgeon, Chairman, Report of Royal Commission on Agreed Charges, Ottawa: The Queen's Printer, 1955.

***** T.D. Heaver & J.C. Nelson, Railway Pricing under Commercial Freedom, p. 35.

5.1.4 Recent Developments

The freight rate controversy did not end with the passage of the NTA in 1967. In testimony to this were the following: the Western Economic Opportunities Conference of 1973, the general rail freight rate freeze of 1973-1974 with compensation being paid to the railways and other carriers, the application of the three Prairie Provinces to the Railway Transport Committee in late 1974 to stop a general rate increase and the subsequent appeal of the provinces and railways to the Federal and Supreme Courts, and the proposals contained in Bill C-33 and later Bill C-20 to amend rate regulation.

Bill C-20, the most recent attempt at resolving the freight rate controversy, included, among other things, changes: to speed up proceedings under section 23 of the NTA, to extend the coverage of the minimum and maximum sections of the Railway Act to agreed charges, to clarify that the CTC may begin investigation under the minimum rate provision on its own initiative or on a complaint, to permit the Commission to assess costs and penalties where a railway was found to be in violation of either the minimum or maximum limits, to prevent long-haul/short-haul discrimination except where competition demanded it, to extend coverage of the maximum rate control to all shippers, and to amend the formula used to calculate the maximum rate. This bill died with the Fourth Session, Thirtieth Parliament and current government intentions in this area are unknown.

5.2 Institutional Setting

The present regulatory controls on freight rates, discussed in general terms in the previous section, are examined here in more detail. The discussion begins with section 23 of the NTA for the reason that all rate cases that have been before the Commission, other than one captive shipper application, have had to do with this section. The next statutory provision examined is section 264 of the Railway Act which provides protection to less-than-carload (shipments weighing less than 5 000 pounds) shippers. The discussion then turns to the various features of the minimum and maximum rate controls. Finally, the sections of the Transport Act pertaining to agreed charges are reviewed.

5.2.1 Section 23 of the NTA

Section 23 of the NTA offers protection to the public interest from acts, omissions or tolls prejudicial to it and is generally seen as replacing those sections of the Railway Act which, prior to 1967, dealt with undue and unreasonable discrimination. However, unlike the previous provisions, which only covered rail, section 23 pertains to any for-hire rail, water, air, motor vehicle, or commodity pipeline carrier which is under the legislative authority of Parliament. The section states:

> (2) Where a person has reason to believe
>
> (a) that any act or omission of a carrier or of any two or more carriers, or
>
> (b) that the effect of any rate established by a carrier or carriers pursuant to this Act or the Railway Act after the 19th day of September 1967, may prejudicially affect the public interest in respect of tolls for, or conditions of, the carriage of traffic within, into or from Canada, such person may apply to the Commission for leave to appeal the act, omission or rate, and the Commission shall, if it is satisfied that a prima facie case has been made, make such investigation of the act, omission or rate and the effect thereof, as in its opinion is warranted.*

The regulatory process can be broken into a number of steps. In his 1971 report on the Prairie rapeseed crushers application for leave to appeal rates on rapeseed oil and meal, "the Rapeseed Case", D.H. Jones, Chairman of the RTC stated:

> Section 23 indicates it should be dealt with in four stages. On the filing of an application, the Commission is to decide whether leave to appeal the act, omission or rate should be granted. Then, the Commission is to conduct such investigation of the act, omission or rate as in its opinion is warranted, and, in so doing, have regard to the matters enumerated by subsection (3). The third step requires the Commission to hold a hearing at which the applicant and other parties in interest are entitled to appear. Finally, the Commission is to decide whether the act, omission or rate in question in the appeal is prejudicial to the public interest, and, in the event of such a finding, is empowered to take remedial action in the terms of subsection (4).**

Subsequently, in its decision on the findings of the investigation and hearing for the Rapeseed Case, the RTC, in considering whether an investigation should be followed by a report, stated that it was not sure whether the hearing was to be considered part of the investigation:

> Section 23 established no criteria in this regard; the Committee is simply told that upon the granting of leave to appeal it must do two things: first, conduct an investigation, and second, hold a hearing. The statute affords no sure guide as to whether the investigation precedes or follows the hearing or, indeed, whether the hearing is to be merely a part of the investigation. While we incline toward the latter as being the correct interpretation of Section 23, we have not

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* NTA, 1970, subsection 23(2).

** Report, October 29, 1971 and Order No. R-13001 - In the matter of Application dated October 14, 1970, of Saskatchewan Wheat Pool et al. pursuant to section 23 of NTA for leave to appeal acts, omissions or rates of CN, CP, Northern Alberta Railways and Canadian Freight Association, pp. 6-7.

> been as concerned with the legal niceties of this question as we have with the practical considerations and the overriding duty of the Committee to reach conclusions which dispose of the issues in the case with the greatest possible degree of dispatch.*

The public interest, to which the act, omission or toll must be prejudicial, is stated to include, but is not restricted to, the public interest as defined by the National Transportation Policy of section 3 of the NTA. In addition to this general reference to the whole of section 3, two of its subsections appear again in section 23 as factors which the Commission must take into consideration as part of any investigation. The Act states that the Commission shall consider among other things:

> (a) whether the tolls or conditions specified for the carriage of traffic under the rate so established are such as to create
> (i) an unfair disadvantage beyond any disadvantage that may be deemed to be inherent in the location or volume of the traffic, the scale of operation connected therewith or the type of traffic or service involved, or
> (ii) an undue obstacle to the interchange of commodities between points in Canada or an unreasonable discouragement to the development of primary or secondary industries or to export trade in or from any region of Canada or to the movement of commodities through Canadian ports: or ...**

Item (i), as was discussed earlier, directs the Commission to look beyond those differences in rates due to specific cost conditions when determining if a rate differential is prejudicial to the public interest.

The Act goes on to state that the Commission shall also consider the following in its investigation:

> (b) whether control by, or the interests of a carrier in, another form of transportation service, or control of a carrier by, or the interest in the carrier of, a company or person engaged in another form of transportation service may be involved.***

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* Decision, June 27, 1973 - In the matter of application and appeal of Saskatchewan Wheat Pool et al., pursuant to section 23 of the NTA, p. 12.

** NTA, 1970, paragraph 23(3)(a).

*** Ibid., paragraph 23(3)(b).

Finally, with respect to the Commission's authority to correct any omission, act or toll it finds prejudicial to the public interest, the Act states:

> (4) If the Commission, after a hearing, finds that the act, omission or rate in respect of which the appeal is made is prejudicial to the public interest, the Commission may, notwithstanding the fixing of any rate pursuant to section 278 of the Railway Act but having regard to sections 276 and 277 of that Act, make an order requiring the carrier to remove the prejudicial feature in the relevant tolls or conditions specified for the carriage of traffic or such other order as in the circumstances it may consider proper, or it may report thereon to the Governor in Council for any action that is considered appropriate.*

In summary, section 23 of the NTA provides a general route of appeal over and above the specific rate control provisions of the _Railway Act_ or the _Transport Act_. Under this general public interest provision, the Commission must first satisfy itself that the applicant has a _prima facie_ case, and if it does, it must then conduct an investigation of the complaint.

5.2.2 Section 264 of the Railway Act

A new provision introduced into the _Railway Act_ with the passage of the NTA was section 264. It states that:

> 264. Notwithstanding section 278, where in the opinion of the Commission there is, in respect of the carriage of goods in less than carload quantities under five thousand pounds to or from any point in Canada, no alternative, effective and competitive service by a common carrier other than a rail carrier or carriers or a combination of rail carriers, the Commission may investigate the tariff of tolls applying to the carriage in those quantities to or from such point in Canada and if the Commission finds that the tariff tolls of a railway company, or any portions of the tariff, are such as to take undue advantage of a monopoly situation favouring rail carriers in respect of the carriage of such goods or class of goods, the Commission may disallow such tariff of tolls or any portion thereof and may require the railway company to substitute within a specified period of time a tariff of tolls satisfactory to the Commission or it may prescribe other tolls in lieu of any tolls so disallowed. 1966-67, c. 69, s.44.**

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* _Ibid_., subsection 23(4).

** _Railway Act_, (1970), section 264.

This section provides rate protection to shippers of small loads who find themselves in a monopoly situation with respect to rail transport.

If the CTC finds that undue advantage has been taken of the monopoly situation then it may require the railway to substitute tolls which are satisfactory to the Commission or it may set the tolls itself. This is unlike the captive shipper clause which covers all other traffic where the railway has a monopoly. In that case, if the Commission declares the shipper captive, it must set a rate equal to 150 per cent of variable costs.

As of yet no appeals have been heard under section 264 of the Railway Act.

5.2.3 Minimum Rates Sections 276 and 277 of the Railway Act

The minimum level for all freight rates unless otherwise stipulated is set out in section 276 of the Railway Act. It states that:

> 276.(1) Except as otherwise provided by this Act all freight rates shall be compensatory; and the Commission may require the company issuing a freight tariff to furnish to the Commission at the time of filing the tariff or at any time, any information required by the Commission to establish that the rates contained in the tariff are compensatory.
>
> (2) A freight rate shall be deemed to be compensatory when it exceeds the variable cost of the movement of the traffic concerned as determined by the Commission.*

The section goes on to state that, when the CTC determines the variable cost for movements under this section or section 277, it shall have regard for the regulations which are relevant in the determination of variable costs. Furthermore, in calculating the cost of capital the rate approved by the Commission for Canadian Pacific shall be used in all cases.

Section 277 states that the CTC has the power to disallow any rate it finds as not being compensatory. The section also sets out the Commission's duties with respect to an inquiry:

> (2) Where the Commission receives information by way of a complaint or otherwise containing prima facie evidence that a freight rate shown in a tariff filed with the Commission is not compensatory, the Commission shall conduct an investigation to determine if such rate is compensatory, and in any other case the Commission may, of its own motion, conduct such an investigation. 1966-67, c. 69, s. 53(4)(5).**

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* Railway Act, (1970), subsections 276(1) & (2).

** Railway Act, (1970), subsection 277(2).

To date no proceedings have taken place with respect to minimum rates.

5.2.4 Maximum Rate Section 278 of the Railway Act

A shipper, who is facing a monopoly position in respect to rail transportation, has the option under section 278 of the Railway Act of requesting the CTC to establish a fixed rate under which its traffic shall move. The shipper must first request that the Commission determine the probable range within which a fixed rate would fall. Once informed of this range the shipper may request that the Commission establish a fixed rate which is equal to 150 per cent of variable costs. The Act states:

> 278.(1) A shipper of goods for which in respect of those goods there is no alternative, effective and competitive service by a common carrier other than a rail carrier or carriers or a combination of rail carriers may, if he is dissatisfied with the rate applicable to the carriage of those goods after negotiation with a rail carrier for an adjustment of the rate, apply to the Commission to have the probable range within which a fixed rate for the carriage of the goods would fall determined by the Commission; and the Commission shall inform the shipper of the range within which a fixed rate for the carriage of the goods would probably fall.
>
> (2) After being informed by the Commission of the probable range within which a fixed rate for the carriage of the goods would fall, the shipper may apply to the Commission to fix a rate for the carriage of the goods, and the Commission may after such investigation as it deems necessary fix a rate equal to the variable cost of the carriage of the goods and an amount equal to one hundred and fifty per cent of the variable cost as the fixed rate applicable to the carriage of the goods in respect of which the application was made (hereinafter in this section referred to as the "goods concerned").*

Once the CTC has fixed the rate, the shipper has 30 days from the time the Commission notifies him of this rate to enter into a written undertaking with the railway to ship the freight in question under the fixed rate. A shipper who enters into such an agreement is under an obligation to ship all freight concerned by rail for a period of one year and for so long thereafter as the rate remains in force. However, after one year, the Commission may adjust the rate if it is satisfied there was a change in variable costs; as well, the shipper may give notice to the Commission and the railways involved that he no longer wants to be bound by the agreement, and the Commission, if it is satisfied that there is an alternative effective and competitive service available to the shipper, may, upon application of a railway company, cancel the fixed rate.

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* Railway Act, (1970), subsections 278(1) & (2).

If the shipper fails to send all the goods in question by rail or the shipper fails to provide information necessary to verify that all the traffic was shipped by rail, the Commission may cancel the fixed rate. When a rate is so cancelled, a rail company may recover from the shipper for all goods shipped under the fixed rate, the difference between the maximum rate and the rate the traffic would have moved before the maximum rate was set. The company also has the right to damages equal to ten per cent of the maximum rate for all goods which were not shipped as agreed to by the shipper in the written undertaking. There has, to the present, been one application under this section.

5.2.5 Agreed Charges: Sections 32 to 35 of the Transport Act

Sections 32 to 35 of the *Transport Act* permit the use of agreed charges by railways. Subsection 32(1) gives a carrier the right to enter into agreed charges. These rates provide the railways with a competitive tool to meet intermodal competition or, if so desired, market competition. However, subsection 32(2) precludes their use in intramodal competition unless the competing carriers consent to it:

> (2) No agreement for an agreed charge for the transport by rail from or to a competitive point, or between competitive points, on the lines of two or more carriers by rail shall be made unless the competing carriers by rail consent thereto in writing or join in making it.*

An agreed charge is for most or all of a shipper's traffic and thus its duration is of importance. Subsection 32(12) states that any party to an agreed charge may withdraw from it after it has been in effect for at least one year notwithstanding anything stated in the agreement. This was interpreted prior to 1976 to mean that all agreed charges had to be for a period of one year or more. However, in 1976, this subsection was interpreted to mean that it was possible to have agreed charges for a period of less than a year so long as the date of expiration appeared in the agreement.**

Agreed charges are not restricted to the initial parties signing the agreement. Subsection 32(9) establishes that other shippers may also become parties to an agreed charge with the consent of the carrier by filing a notice of intent with the CTC. Also, under subsection 32(5) a water carrier who has established through routes and interchange arrangements with a railway is permitted to become a party to an agreed charge.

The *Transport Act* also provides for protection against unjust discrimination with respect to agreed charges. Subsection 32(10) gives the

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* Transport Act, *Revised Statutes*, 1970, subsection 32(2).

** T.D. Heaver and J.C. Nelson, *Railway Pricing under Commercial Freedom*, p. 31.

CTC the power to fix charges for other shippers who feel that they are unjustly discriminated against by any agreed charge:

> (10) Any shipper who considers that his business is or will be unjustly discriminated against by an agreed charge may at any time apply to the Commission for a charge to be fixed for the transport by the same carrier with which the agreed charge was made of goods of the shipper that are the same as or similar to, and are offered for carriage under substantially similar circumstances and conditions as, the goods to which the agreed charge relates, and, if the Commission is satisfied that the business of the shipper is or will be unjustly discriminated against by the agreed charge, it may fix a charge including the conditions to be attached thereto, to be made by the carrier for the transport of the goods of the shipper, and may fix the day on which those charges shall be effective, not being earlier than the day on which the agreement for the agreed charge was made.*

Section 33 also provides a route of redress for grievances. Subsection 33(1) states:

> (1) Where an agreed charge has been in effect for at least three months
> (a) any carrier, or association of carriers, by water or rail,
> (b) any association or other body representative of the shippers of any locality, or
> (c) any association or other body representative of the motor vehicle operators of Canada or of a province thereof
> may complain to the Minister that the agreed charge is unjustly discriminatory against a carrier or a motor vehicle operator or a shipper or places his business at an unfair disadvantage, and the Minister may, if he is satisfied that in the public interest the complaint should be investigated, refer the complaint to the Commission for investigation.**

Furthermore, subsection 33(2) goes on to state that if the Governor in Council believes that an agreed charge is undesirable in the public interest, he may refer the agreed charge to the CTC for investigation. When dealing with a referral under section 33, the Commission must have regard to all relevant matters, including the effect of the agreed charge on the net revenue of the carriers and whether the charge is unjustly discriminatory to the complainant or places him at an unfair disadvantage. A referral by the Governor in Council may also direct the Commission to consider whether the agreed charge places any other transportation services at an unfair disadvantage.

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* Ibid., subsection 32(10).

** Ibid., subsection 33(1).

There have been no agreed charge proceedings under either section 32(10) or section 33 for the period under consideration.

Finally, it is noted that the protection offered under section 23 of the NTA extends to agreed charges as well. D.H. Jones, Chairman of the RTC, in his 1971 report on the applicants' right to leave to appeal rates on rapeseed meal and oil, set out the reasons why section 23 included agreed charges.*

5.3 Analysis

The previous two sections discussed the change in transport policy and legislation which occurred in 1967. The spirit of the change was the substitution of competition for regulation. The railways were given the freedom to set rates and the CTC was given residual rate regulatory powers. These statutory powers include: a requirement that rates be compensatory, protection for shippers against the abuse of monopoly power and a general provision to protect shippers against acts, omissions or rates which created an unfair disadvantage, an undue obstacle or an unreasonable discouragement. This information provides a background against which to begin the analysis.

The main focus of the analysis is on cases coming under section 23 of the NTA because all proceedings since 1967, with the exception of one captive shipper case, have related to section 23.

5.3.1 Section 23 of the NTA

A list of cases pertaining to rail freight rates which have been initiated pursuant to section 23 is given in Table 5.1. The table indicates for each case: if an application was subsequently withdrawn; if a *prima facie* case was established; or, if a decision as to prejudice to the public interest was made. The number of cases for which either a *prima facie* case had been established or final decision issued was not large. This makes it somewhat difficult to examine the decisions from the point of view of consistency. It is still possible, however, to offer a few comments on the approach adopted by the RTC in section 23 cases.

5.3.1.1 Consideration of the Public Interest

The RTC's interpretation of the public interest, of course, is of prime importance in section 23 cases. In the Rapeseed Case, D.H. Jones addressed the question of what was meant by the term "public interest". In his report on the application for leave to appeal, he first noted that the definition

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* *Report* and Order No. R-13001, pp. 33-36.

Table 5.1

RAILWAY FREIGHT CASES PURSUANT TO SECTION 23 NTA

Case	Date of Application	Prima Facie	Investigation, Hearing and Decision	Subsequent Action
Prince Albert Pulp Co.	April 1970	- prima facie case established - leave to appeal granted - application withdrawn		
Anglo-Canadian Pulp and Paper Mills et al. (the Newsprint Case)	May 1970	- prima facie case established - leave to appeal granted	- interim decision postponing date of increase - dismissed	
Saskatchewan Wheat Pool et al. (the Rapeseed Case)	October 1970	- prima facie case established - leave to appeal granted	- rates prejudicial - relief given, interim basis	- appeal made by CSP Foods Ltd. to Governor in Council - appeal granted - Order and Decision varied - unsuccessful appeal by CSP and Cambra Foods Ltd. to Federal Court of Canada re: interpretation of "minimum compensatory levels" - application by Western Rapeseed Crushing Industry granted extending prescription of rates to containers other than tanks
Kootenay-Columbia Timber Co.	April 1971	- withdrawn		
Asbestos Eastern Transport Inc.	September 1971	- no Decision required - tariff rejected by CTC		
Neptune Terminals Ltd.	July 1972	- no Decision required - rates equalized		

Table 5.1 (cont'd)

Case	Date of Application	Prima Facie	Investigation, Hearing and Decision	Subsequent Action
Cansulex Limited (the Sulphur Case)	March 1976	- application withdrawn		
McIntyre Mines Ltd. (the Coal Case)	May 1976	- prima facie case established - leave to appeal granted	- application withdrawn	
Canadian Cellulose Co. Ltd. and Twinriver (the Logs Case)	August 1976	- pending anti-inflation report - application withdrawn		
Bateaux St.-Maurice Inc. v. Express Transport Association et al. (the Canoe Case)	May 1977	- prima facie case established - leave to appeal granted	- interim order-final - rates prejudicial	
Transport Robert Richer Inc. (the Automobile Case)	July 1976 July 1977	- application withdrawn - second application denied		
Canadian Pulp and Paper Association (the Incentives Case)	July 1977	- prima facie case established - leave to appeal granted	- case postponed sine die	
Canadian Pulp and Paper Association (the Disparities Case)	August 1977	- prima facie case established - leave to appeal granted	- application granted	- CN and CP's application for stay of Order No. R-29767 pending resolution of their appeal to Federal Court of Canada on questions of law and jurisdiction was denied - request of CN and CP for review of decision denying application for stay of order denied - Federal Court of Canada found that appellants had been denied a due hearing on diversion of shipments

Table 5.1 (cont'd)

Case	Date of Application	Prima Facie	Investigation, Hearing and Decision	Subsequent Action
				- a new hearing was held and the RTC found that the rate increases were an important factor in the diversion and that rate parity should be restored
Columbia Containers Ltd. (the Demurrage Case)	March 1978	- prima facie case established - leave to appeal granted	- application granted - features found to be prejudicial are to be removed from relevant tolls - demurrage charges arising out of these features are to be cancelled	- appealed to Federal Court and appeal subsequently withdrawn
L'Association des manufacturiers de bois de sciage du Québec (the Lumber Case)	December 1978	- withdrawn		
Continental Grain Company (Canada) Ltd.	July 1979	- prima facie case established - leave to appeal granted	- after staff investigation parties requested hearing not be scheduled	- parties negotiating since leave to appeal was granted - application to withdraw is expected to result

of the public interest was as it pertained to the merits of the case at hand and it was not an attempt to set out an all-encompassing definition to cover the circumstances of all future cases. He stated:

> It is at this point that I believe the meaning of the expression 'public interest' should be considered. I will not attempt to compile an exhaustive definition of that expression but will confine myself to the circumstances of the present case on the principle that Parliament intended the Commission to have a wide discretion in the matter, and that it would be improper for me to attempt to establish criteria for the application of the test of public interest to future cases in which the circumstances will undoubtedly be at variance from those in the present case.*

He then pointed out that section 23 defined the public interest to include the public interest as set out in section 3 of the NTA. After quoting this section in its entirety, he drew specific attention to subsection (d) which reads as follows:

> (d) each mode of transport, so far as practicable, carries traffic to or from any point in Canada under tolls and conditions that do not constitute
>
> (i) an unfair disadvantage in respect of any such traffic beyond that disadvantage inherent in the location or volume of the traffic, the scale of operation connected therewith or the type of traffic or service involved, or
>
> (ii) an undue obstacle to the interchange of commodities between points in Canada or unreasonable discouragement to the development of primary or secondary industries or to export trade in or from any region of Canada or to the movement of commodities through Canadian ports.**

Commissioner Jones stated with respect to this subsection that:

> It will be noted that Section 3(d) reappears in almost identical form in Section 23(3)(a), under which the Commission, in conducting an investigation following the granting of leave to appeal, is to have regard to all the considerations that appear to it to be relevant, including, without limiting the generality of the foregoing, the matters enumerated in Section 3(d). The main difference between the two provisions is that in the former the word "constitute" appears while in the latter the word is "create".

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* Report and Order No. R-13001, p. 16.

** Ibid., p. 17.

> According to The Concise Oxford English Dictionary, "constitute" means, in the sense in which it is employed in the statute, "make up, be the components of". "Create", on the other hand, means "bring into existence, give rise to, originate". In its usage in Section 3, the word "constitute" speaks of an existing state of affairs, whereas in Section 23 the word "create" speaks of something yet to happen, in the sense that it is yet to be discovered or become apparent. When these words are examined in their context, it will be seen that the differences in meaning do not affect the duty of the Commission. Because Section 3 enunciates the National Transportation Policy while Section 23(3)(a) is concerned with an investigation, different words were probably thought necessary. In any event, I do not think the use of the two different words makes any material change in the meaning of the expression "public interest" as it applies to the present case.*

He then went on to discuss his understanding of the public interest as it is described in sections 3 and 23:

> In my opinion, the combined result of the definition of public interest when read with Section 3 and subsections (2) and (3) of Section 23 of the National Transportation Act is that two of the elements of the public interest which the Commission must consider in investigating an act, omission or rate and the effect thereof, are whether the tolls or conditions specified for the carriage of traffic under the rate are such as to create an unfair disadvantage beyond any disadvantage that may be deemed to be inherent in the location or volume of the traffic, the scale of operation connected therewith, or the type of traffic or service involved, or to create an undue obstacle to the interchange of commodities between points in Canada or an unreasonable discouragement to the development of primary or secondary interests, or to export trade in or from any region of Canada, or to the movement of commodities through Canadian ports.
>
> There is no doubt in my mind that such an unfair disadvantage, undue obstacle, or unreasonable discouragement, if conclusively shown to be created by the tolls or conditions under which traffic is carried, would be prejudicial to the public interest. Parliament has made it abundantly clear that whatever else the Commission may consider to be a matter of public interest, an unfair disadvantage, an undue obstacle, or an unreasonable discouragement, of the kind just described are elements of the public interest, which the Commission is required to consider.
>
> It has not escaped my attention that the elements of the public interest the Commission is required to consider under Section 23(3)(a) are an unfair disadvantage, an undue obstacle or an unreasonable discouragement created by the tolls or conditions specified for the carriage of traffic under the rate complained of, and that no mention is made of an act or omission of a carrier that

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* Report and Order No. R-13001, pp. 17-18.

> may be equally the subject of a complaint. While the subsection requires the Commission to have regard to these elements of the public interest, the directon is neither restrictive nor limiting. The Commission is to have regard as well to "... all reason of Section 23(1), the National Transportation Policy. And in that regard, effect must be given to the words in Section 3(d) "... each mode of transport, so far as practicable, carries traffic ... under tolls and conditions that do not constitute ... an unfair disadvantage ... an undue obstacle ... or unreasonable discouragement ...." There is no mention of the effect of a rate, and I have concluded accordingly, that an act or omission of a carrier that constitutes or is found to create an unfair disadvantage, an undue obstacle or unreasonable discouragement, as those expressions are used in Sections 3 and 23 of the Act, can be just as prejudicial to the public interest as the effect of any rate. As I have said before, this is not to be taken as a complete catalogue of the elements of the public interest involved in Section 23.
>
> Parliament did not use restrictive language when defining the duty of the Commission, but preferred to put sign posts along the way, indicative of at least the matters it thought the Commission should consider when deciding whether there has been prejudice to the public interest.*

He then continued to discuss in general terms the public interest with respect to the Rapeseed Case:

> In my opinion, all that an Applicant has to do to obtain leave to appeal is to persuade the Commission that the acts, omissions or rates may affect the public interest, and, in the present case, the main thrust of the Application is that the present scale of rapeseed rates may be such as to create either an unfair disadvantage to the Applicants beyond the disadvantage deemed to be inherent in their location, an undue obstacle to the interchange of rapeseed products between points in Western Canada and points in Eastern Canada, an unreasonable discouragement to the development of rapeseed processing as a secondary industry in Western Canada and an unreasonable discouragement to the export of processed rapeseed from Western Canada to foreign markets; whether this proves to be the case is another question that must await the outcome of the Commission's investigation and hearing.**

The RTC issued a decision in 1973 on its findings in the Rapeseed Case. In this decision, a substantial portion of Mr. Jones' comments quoted above are repeated as part of a discussion aimed at explaining the term "public interest."

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* Report and Order No. R-13001, pp. 18-19.

** Ibid., pp. 19-20.

A matter related to the definition of the public interest is the extent of the RTC's jurisdictional power in this area when ordering a remedy for an act, omission or toll found to be prejudicial to the public interest. In discussing its power under subsection 23 (4), the RTC stated in the 1973 Rapeseed Decision that:

> There was one other aspect of the National Transportation Policy, or perhaps, more properly, Sections 3 and 23 of the National Transportation Act, which provoked a great deal of comment and debate throughout the case which it would be timely to determine at this point.
>
> The issue is whether the jurisdiction of the Commission to remedy acts, omissions or rates that are prejudicial to the public interest extends to the entire field of the public interest, as it relates to such questions as, for example, the location and development of industry, or the development of continental and overseas export trade, or whether it is limited by the law, confining the Commission to the transportation aspects of those or similar questions related to the public interest.
>
> It appears to us that the final words of Section 3 of the National Transportation Policy provide the answer to that question — "and this Act is enacted in accordance with and for the attainment of so much of these objectives as fall within the purview of subject matters under the jurisdiction of Parliament relating to transportation."
>
> This limitation leaves the Commission with a wide discretion in which many aspects of these wider questions enter into its exercise, but at the same time we thought it important to state our conclusion on this point at the outset so that, as we deal with each of the issues raised in the case, our opinion as to the extent of our powers is not left in doubt.*

Another aspect of the public interest examined in the Rapeseed Case and which was considered to fall within the public interest as described by section 3, was the attitude adopted by the railways in negotiating rates. This was of particular concern where there was an absence of competition. With respect to this, the RTC stated in the 1973 Decision:

> However, in the absence of effective competition for traffic, as was the case here, rate negotiations must be conducted in an atmosphere of fairness, of give-and-take, with information being freely exchanged, so that the parties can bargain on a basis of equality. The National Transportation Policy requires at least that much, if not more.**

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* Decision, 1973, Saskatchewan Wheat Pool et al., pp. 10-11.

** Decision, 1973, Saskatchewan Wheat Pool et al., p. 44.

The RTC commented several times in the decision on the unwillingness of the railways to facilitate rapeseed meal and oil rate negotiations. The following passage further illustrates the Committee's attitude on this subject:

> We have earlier stated our view that the evidence in this case revealed a persistent unwillingness on the part of railway freight rate officers to react clearly, promptly and unequivocally to requests from the Applicants for more favourable rates. Such behaviour, in our view, cannot be condoned and is contrary to the objectives of the National Transportation Policy. We consider that freedom in rate-making is conditional upon a responsibility to the shipping public in keeping with the objectives of that Policy. That responsibility includes the duty of reasonably prompt responses to shipper requests that are clear and unequivocal. Further, we consider that such requests must be met with adequate explanations based on facts known to the railways, in cases where the railway companies consider that they are unable to accede to such requests in whole or in part.*

a) The Rapeseed Case

In light of this discussion of the public interest, it is now appropriate to turn to the specific rate complaints in the Rapeseed Case and to review the RTC findings with respect to them. The Prairie Rapeseed Processors filed their application with respect to rates on the movement of rapeseed meal and oil from their plants to eastern markets for consumption or export and to West Coast ports for export. The applicants held that the domestic rates on rapeseed oil and meal moving from the west to east were so much higher than the rates on rapeseed moving from the Prairies to the eastern processors as to be prejudicial to the public interest. The essence of this problem was the spread between rates on raw and processed products. The Prairie processors also believed the export rates on oil and meal to be prejudicial to the public interest.

The RTC did a comparison of the domestic rates on rapeseed meal and rapeseed moving from the West to the points where the eastern processors' plants were located. Between the West and Thunder Bay, both meal and rapeseed moved under the statutory export rates on grain. It was from Thunder Bay to eastern locations that the spread arose. From Thunder Bay to Montréal, rapeseed moved under an agreed charge stemming from water competition. However, meal, which the RTC found to be reasonably captive to rail, moved from Thunder Bay to eastern destinations under higher rates.

The RTC stated:

> ... if the present rate structure on rapeseed meal from western Canada is left untouched, we have no doubt that the development of

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* Ibid., p. 53.

> the western rapeseed crushing industry will be unreasonably discouraged. We consider it to be prejudicial to the public interest to wait until these well-founded fears are realized, in the face of the clear evidence before us that it will only be a matter of time before large scale rapeseed crushing begins in eastern Canada.
>
> In terms of the eastbound movement for domestic consumption and export of rapeseed meal, as has been said before several times in this decision, the eastern processors enjoy the distinct advantage of closer proximity to market, both at home and in Europe. But the spread between the rates on rapeseed and the rates on rapeseed meal is so wide as to amount, in our opinion, to an unfair disadvantage in respect of the Applicants' traffic beyond that inherent in their location at Altona, Saskatoon, Nipawin and Lethbridge. And this is particularly so in the light of the manner in which the railway companies have set these rates and have dealt with the efforts of the Applicants to eliminate or at least reduce this disadvantageous feature of the rate structure.*

The RTC then went on to discuss the principle of freight rate neutrality as put forth by a witness:

> In giving evidence, Douglas F. McArthur, the Deputy Minister of Agriculture of the Province of Saskatchewan, expressed his belief that in the absence of other stated objectives, freight rate policy in Canada should be neutral in determining location of industry within the nation. When under cross-examination he was asked to elaborate, and one part of his reply explains, in a manner we approve, that part of the National Transportation Policy which condemns freight rates that are an unfair disadvantage in respect of any traffic, beyond that disadvantage inherent in the location or volume of the traffic, the scale of operation connected therewith or the type of traffic or service involved. He had been asked what he meant by suggesting that in Canada, freight rate policy should be neutral in determining location of industry within the nation. He replied:
>
>> I simply mean by that, that freight rates should not be designed or, set or struck in such a way as to offset the possible impact of other real economic factors that may be involved here, such as the available labour supply, such as the availability of the raw products, such as the need to meet various markets, such as the handling, real handling costs that might be imposed, or the benefits. Cost efficiencies that might occur from locating it in one place to another. Freight rates should be neutral in the sense that they should not either consciously or unconsciously be designed or be set in such a way that they will offset these other factors or indeed make them work in a direction that they wouldn't normally work in.

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* _Decision_, 1973, Saskatchewan Wheat Pool _et al_., p. 51.

> In our opinion, it is essentially this quality of neutrality which must replace competitive factors in rate-making, in cases where shippers do not have the benefits of effective competition from other modes of transport or strong market forces that have the same effect, even taking into account all the other factors that Mr. McArthur has described. And this quality must not only appear in the rate structure; it must also be seen to exist in the process by which the rates are set.*

After finding prejudice to the public interest the RTC also did a comparative test between the transportation of the raw product and meal. The RTC stated:

> The transportation characteristics of rapeseed meal do not differ materially from those of rapeseed itself. Both commodities are shipped in standard boxcars, or covered hopper cars, at approximately the same minimum weight requirements. Rapeseed meal is a less valuable commodity than the seed itself and, consequently, the insurance risk to the railway companies, in cases of loss or damage, is somewhat less than for the seed. On the basis of these comparable transportation characteristics, there appear to be no grounds that would justify a significantly higher basis of rates for movements of rapeseed meal. In this connection, the evidence at the hearing clearly demonstrated that rapesed meal and rapeseed moved in the same kind of equipment, at much the same minimum weights to much the same destinations in eastern Canada. We must conclude, on this comparative test, and on the evidence which clearly established that the current eastbound rates on rapeseed meal are prejudicial to the public interest, that they must be reduced.**

The RTC ordered the rate on rapeseed meal destined to Montréal to be set equal to the level of that on rapeseed. Furthermore, in the future, if an agreed charge were to be negotiated on rapeseed destined for an eastern processor at another location, the rate would be extended to meal. In the meantime, the rates on meal destined to other eastern locations were ordered set to a lower level equal to the rates on feed grain plus a fixed amount.

Before turning to the subject of rapeseed oil rates, it is noted that the topic of neutrality was also discussed with respect to rapeseed rates. The RTC said:

> Although the Applicants, during the course of the hearing, withdrew their original request to reduce the rates on rapeseed meal and rapeseed oil to the level of the rates on rapeseed, we consider we must deal with this matter in the light of the argument advanced by

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* Decision, 1973, Saskatchewan Wheat Pool et al., p. 51.

** Ibid., p. 55.

> the Province of Saskatchewan with respect to "neutrality" in freight rates. At the heart of this argument is the proposition that freight rates on a particular commodity should not create a bias against the natural advantages of a particular location so as to favour artificially the processing of that commodity at another location.
>
> There is no doubt in our minds that the current rates on rapeseed from western Canada to Montréal, consisting of the statutory rate to Thunder Bay plus an Agreed Charge beyond, do create such a bias in favour of the processor Canlin.*

With respect to the domestic rates on the eastern movement of rapeseed oil, the RTC did not find that there was prejudice to the public interest. Unlike meal, which for the first part of its journey moved on the statutory rate and then moved under a commodity rate, rapeseed oil travelled the whole journey under agreed charges from the western plants to the East. The RTC stated:

> For the present, the question of domestic rates on rapeseed oil can also be dealt with substantially in terms of freight rate neutrality. In our view, one way that freight rate neutrality can be assessed is in terms of the treatment that is accorded in the rate structure to the same or similar commodities moving under substantially similar circumstances and conditions, particularly if such similar commodities are competitive substitutes.
>
> Appendix II to this decision sets out in tabular form freight rates on vegetable oils extracted from the tariffs of the railway companies on file with the Commission. In this connection, we have noted that the level of freight rates to-day, from western Canada to eastern Canada, on rapeseed oil in jumbo tank cars, is at the same level as it was in 1968, whereas most other Agreed Charge rates have generally been subjected to two increases in rates. In addition, the level of rates on rapeseed oil, from western Canada to eastern Canada, in standard tank cars, is lower to-day than it was in 1959.
>
> It will be noted from Appendix II that the Applicants' freight rates on rapeseed oil are substantially lower than those applicable on other similar movements of vegetable oils. The rates shown in Appendix II under the heading "OTHER SIMILAR MOVEMENTS" are the lowest applicable rates and are at levels compelled by either truck or water competition.
>
> Although they are higher than the eastbound domestic rates on rapeseed, by this comparative test, we find that the freight rates accorded to the Applicants on rapeseed oil are not prejudicial to the public interest, at least at this time, particularly when it is clear that rapeseed oil is an acceptable substitute for any other form of vegetable oil. We are therefore not ordering any change in the Applicants' eastbound domestic rates on rapeseed oil. These rates will, however, be reviewed as part of our continuing investigation, particularly in their relationship to the new eastbound rates on domestic rapeseed meal, ordered by this decision.**

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* Decision, 1973, Saskatchewan Wheat Pool et al., p. 54.

** Decision, 1973, Saskatchewan Wheat Pool et al., p. 57.

With respect to export rates on rapeseed meal and oil, the RTC found they had not been adequately developed and that this was an omission which was prejudicial to the public interest.* The RTC stated:

> We now consider export freight rates on rapeseed meal and rapeseed oil which, in our opinion, are in an entirely different category. We are convinced that the long-term prosperity of the Applicants lies in the development and growth of an export market for the products of rapeseed. Apart from the export rates on meal from Lethbridge to Vancouver, and from Nipawin to Port Moody and Vancouver, the railway companies do not appear to have developed a complete export rate structure on rapeseed meal and rapeseed oil. We consider that this is an omission prejudicial to the public interest and we are directing the railway companies to submit to the Committee an export rate structure that will be satisfactory to the Committee. In view of the remedial procedure described below, no further direction is necessary at this time, except that such proposed export rate structure is to be submitted to the Committee within thirty days from the date of this decision.**

Finally, with respect to the Rapeseed Case, there was one aspect of the public interest that had to do with statutory grain rates not yet discussed in this report . Both rapeseed and rapeseed meal moved under statutory rates for a portion of their eastward trip. However, this identical treatment ended at Thunder Bay. Rapeseed moved from Thunder Bay to Montréal on a water-competitive agreed charge while meal travelled under a commodity rate which was higher. The statutory rates on grain were non-compensatory then and remain so today.*** The higher rates on meal on the Thunder Bay — Montréal section in all likelihood made a contribution to covering the shortfall on the portion of the journey up to Thunder Bay.

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* The RTC issued an interim order requiring the railways to file new tariffs with tolls giving effect to its determinations. Subsequently, a series of events took place that further altered the rates. These events are fully described elsewhere (see Trevor D. Heaver and James C. Nelson, Railway Pricing Under Commercial Freedom , pp. 257-60, and it is sufficient for this discussion to describe only how the rates are now set. In 1976 the Governor in Council, in response to appeals by the applicants and the Prairie Provinces under section 64 of the NTA varied the Decision and Orders of the RTC. The Order-in-Council (1976-984) required the RTC to establish on an annual basis, the minimum compensatory level for the rates or portions of rates set out below covering the domestic or export movement of rapeseed meal and rapeseed oil from four Prairie locations: rates for rapeseed meal and oil moving west; rates for rapeseed oil shipped east; and, the portions of rates applying to the shipment of rapeseed meal east of Thunder Bay or Armstrong, Ontario.

** Decision, 1973, Saskatchewan Wheat Pool et al., p. 58.

*** Approximately a decade prior to the Rapeseed Case, the MacPherson Commission had reported the cases with respect to both variable and constant costs on moving grain under statutory rates. See Royal Commission on Transportation, Volume 1, Ottawa, 1961, pp. 28-30.

It is not likely this was the case for rapeseed, however, because the agreed charge was much lower in order to be competitive with water and thus there would not have been sufficient revenues to provide a cross subsidy to the pre-Thunder Bay leg of the trip. Therefore, the RTC's action of reducing the rate on meal to Montréal relative to the rate on rapeseed in all probability eliminated the possibility of a cross subsidy to the pre-Thunder Bay journey for rapeseed meal.

b) The Prince Albert Pulp Case

The public interest was also discussed in the Prince Albert Pulp Company Decision (Woodpulp Case) of 1972. It was found in this decision that the applicants had made a prima facie case and leave to appeal was granted.[*] The discussion of the public interest was specifically related to various aspects of the Prince Albert case. Several arguments, put forth by the company, were reviewed in the decision whereupon it was stated that all the considerations fell within the public interest. The decision stated:

> In order to bring a situation of this kind within Section 23 of the National Transportation Act, to obtain leave to appeal, an applicant must, in my opinion, go further than merely demonstrating an element of unfairness as between it and its competitors. It must also show that the public interest is involved and, on an application for leave to appeal, that the public interest may be prejudiced by the situation it brings to the attention of the Committee. This, in my opinion, the Applicant has been able to do in the present case.
>
> It contends that the impact of the rates on wood pulp in question in this case may be such as to create an unreasonable discouragement to the development of industry or to export trade in or from the region in which the rates are assessed. It points to the fact that the development of the Prince Albert mill is in keeping with the stated policies of the Government of Saskatchewan, which support economic diversification in a province that has been heavily dependent on agriculture, and to that end encourage the development of industry that exploits other natural resources for the economic benefit of the Province. The Applicant argues that as long as it is faced with the necessity of paying the present freight rates with the prevailing differentials between it and its competitors, its prospects for development and growth may be severely inhibited. It concludes:
>
> > The construction of the applicant's mill, the establishment of the woodcutting operations, and the road construction programme provide access not only to the spruce and jackpine stands presently required by the applicant's mill but also to

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[*] On July 22, 1975 the applicant was permitted to withdraw its application. The Interstate Commerce Commission had found in favour of a rate complaint which the applicant had also filed with it. The railways agreed to lower their rate to the same level ordered by the ICC in shipments in the United States. Thus the applicant could see no further net benefit in pursuing the case.

hardwood stands which comprise approximately 50% of the region's forest resources. Such access to these wasting resources now makes exploitation possible. Recent regional economic studies have indicated that:

> The forests are not being used to their full productive capacity. There are immediate opportunities for greater use of this resource through the establishment of new forest industries and hence the provision of more employment. As a renewable resource, the forests are constantly changing; improving in some areas and decaying in others. The natural process of growth, decline, decay and regeneration must be interrupted by harvesting if society is to benefit. Timber lands ready for harvesting become an asset only when goods and services are produced from them and optimum sustained benefits can be achieved only when the rate of harvesting is commensurate with the maximum cut allowable under sustained-yield production.
>
> The applicant's mill has had and will have a profound impact in commercial and service demands both of a recurring nature through increased purchasing power stemming from expansion in employment and personal income and through capital formation as a result of increased construction activity to accommodate the growth in population. Expansion has been evidenced in the trade and service sector of Prince Albert in existing facilities, improvement to the business core of the city and in professional services, accommodation, entertainment and recreational facilities and increased demands for school facilities, hospital facilities and public administration services.
>
> The applicant's mill has had and will have a real impact in increasing provincial and federal revenue in the areas of personal and corporate income tax, sales tax, utilities tax and real property tax through its contribution direct and indirect to increased employment and personal income, purchases of services and supplies and its inducement to regional growth and expansion.
>
> The applicant contends and the facts so indicate that the applicant's mill situated near Prince Albert contributes both directly and indirectly to the diversification and development of the Saskatchewan economy and to the utilization of the region's forests adding a new dimension to the use of Saskatchewan's natural resources.

In my opinion, these factors all fall within the concept of the public interest encompassed in Section 23 of the National Transportation Act and reflect the kind of situation that the Committee ought to investigate and to allow the Applicant to develop further at a public hearing at which all factors can be fully explored.*

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* Decision, February 10, 1972 - Application of Prince Albert Pulp Company Ltd. for leave to appeal under section 23 of the National Transportation Act, p. 30.

The first paragraph of the above quotation points out that the applicants, when attempting to establish a prima facie case, must go beyond showing that an element of unfairness existed in the rate structure. They must also show that there was a possibility that the unfairness was also prejudicial to the public interest. But even before doing this, it was first necessary to ensure that the element of unfairness was real rather than apparent. Many of what appear at first glance to be anomalies in the rate structure turn out, on second consideration, to be reasonable responses to market situations. This point had been made in the two paragraphs immediately preceding the passages quoted above:

> The railway rate structure is replete with apparent anomalies. While at first sight they appear to carry with them an element of unfairness, it cannot always be said that, of themselves, they constitute grounds for leave to appeal under Section 23 of the National Transportation Act.
>
> It is not enough simply to look at a map and measure the rail miles between competing plants and a common market, and from there to say that if there is any relative inequality in the rates, a situation is created for which Section 23 requires relief. It may well be that there are reasons inherent in the business carried on by the shipper or in the competitive structure in which he operates that result in this kind of rate anomaly. If it were only a question of difference in rates that could in some way be related to such conditions, an Applicant would find it very difficult to obtain leave to appeal under Section 23 of the National Transportation Act. But the Applicant's complaint is also that its advantage of closer proximity has not been given its full effect. It goes further and says that the Ontario mills at Dryden and Thunder Bay are unduly favoured by rates which are lower than they ought to be, relative to the rates that the Applicant must pay. It says, in effect, that its rates must be lower if they are to reflect properly the relative proximity of the Prince Albert mill to its markets. Here again, these factors are not, in my opinion, sufficient of themselves to warrant the granting of leave to appeal.*

c) The Newsprint Case

The 1972 Anglo-Canadian Decision (Newsprint Case) also contained a discussion of the public interest.** This decision, like that for the

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* Decision, 1973, Prince Albert Pulp Company Ltd., p. 30.

** Decision, November 15, 1972 - Application of Anglo-Canadian Pulp and Paper Mills Limited et al. for leave to appeal under section 23 of the National Transportation Act.

Prince Albert Case, found that there was a prima facie case and leave to appeal was granted.* The discussion began with a repetition of the definition of the public interest given by Commissioner Jones in the Rapeseed prima facie Decision. The discussion then turned to identifying the public interest in the case at hand. Again, as was the case in the Prince Albert Decision, this was done by reviewing various considerations put forth in support of the applicant's case and by stating that these factors fell within the public interest. The decision states:

> What the Applicants seek to establish in the present case is that the present scale of newsprint rates may be such as to create an unfair disadvantage to them beyond the disadvantage deemed to be inherent in their location or the volume of their traffic, an unreasonable discouragement to the development of newsprint manufacturing as both a primary and a secondary industry in Canada, and an unreasonable discouragement to the export of manufactured newsprint from Canada to the principal markets in the northeast and mid-west regions of the United States.
>
> The factors placed in evidence before the Committee and referred to earlier in this Decision have persuaded me that there may be an unfair disadvantage beyond any disadvantage that may be inherent in the location of the Applicants' mills to their markets, as against the rates that apply to transportation of newsprint from domestic U.S. points, including particularly those in the southern United States. In reaching this conclusion, I recognize the fact that the level of domestic rates within the United States is a matter entirely within the jurisdiction of the Interstate Commerce Commission. The complaint of the Applicants, however, is against the Canadian railways which they say have refused to preserve the rate relationships established by the 1934 Decision of the Board of Railway Commissioners by setting reduced rates to restore the competitive position of the Applicants' mills, and instead have unduly increased the rates payable by the Applicants within Canada.
>
> I am also persuaded that these acts or omissions on the part of the Respondents may have directly contributed to the decline in the sales of Canadian newsprint in the principal United States markets, and, to that extent, may be unreasonably discouraging export trade in newsprint from the region of Canada in which the Applicants' mills are located.

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* In the decision March 25, 1977 the RTC dismissed the section 23 application stating:

> From the rate comparisons presented in evidence no pattern emerged which would suggest that rail freight rates on newsprint to United States destinations create an unfair disadvantage "beyond any disadvantage deemed to be inherent in the location or volume of the traffic, the scale of operation connected therewith or the type of traffic or service involved." Nor has it been shown that the existing rate structure creates an undue obstacle to newsprint exports to the United States inasmuch as the Applicants have successfully increased their newsprint sales to the United States since 1950. The RTC stated that the decline in the applicant's market share in the Southern U.S. was due to factors other than the cost of transport.

> The Applicants' inability to maintain their former favourable position in their markets in the United States cannot help but have a profound effect on the ability of the newsprint industry to develop with all the secondary effects in terms of investment, employment, regional development and other comparable factors of which Mr. Hamilton spoke in his evidence.*

The text then discussed the importance of the newsprint industry to the economy of Canada and, in particular, the province of Québec. Attention was then drawn to a portion of Québec's submission:

> It is at this point that it would be most useful to consider the intervention of the Government of the Province of Québec. The Government of Québec supports the Application in its entirety and explains its position as follows:
>
> > ... The Intervener represents the interests of the people of the Province of Québec and, as such, must defend the public interest, both in Canada and in Québec; ... the Applicants play a fundamental role in the Canadian economy ... the Intervener recognizes that he must, in the present case, defend private interests if he is to defend the general interest; ... it is essential to maintain and improve the competitive position of the Applicants for the well-being of the economy of Canada, of the Province of Québec, and particularly, of a number of regions within Québec; ... a stagnant or deteriorating competitive position would have serious consequences for the economy of Québec and would therefore prejudicially affect the public interest; ... the railway rate structure is particularly important when one considers that the industries of both Canada and Québec depend heavily on their export markets, especially those in the United States, the existing railway rate structure puts the pulp and paper industry at a disadvantage, which contributes to its non-competitive position; ... the situation described in the preceding paragraph does prejudicially affect the public interest and, therefore, justifies the Applicants' claim for relief; ... the Intervener is in complete accord with the conclusions of the present Application...**

Following this, the Decision presented the applicants' point with respect to the importance of the newsprint shipments to the respondent railway. The decision went on to say:

> The Applicants conclude, supported by the Government of the Province of Québec, that the public interest at all levels, whether generally or as described in Section 3 of the National Transportation Act, is gravely and prejudicially affected by the unfair disadvantage and unreasonable

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* Decision, 1972, Anglo-Canadian Pulp and Paper Mills Limited *et al.*, p. 35.

** Decision, 1972, Anglo-Canadian Pulp and Paper Mills Limited *et al.*, p. 36.

> discouragement to development, and to export trade created by the tolls and conditions for the carriage of traffic and the discriminatory and unfair freight rates complained of in the Application.
>
> In my opinion, all these factors persuade me that the present scale of rail freight rates for the transportation of newsprint manufactured by the Applicants to United States markets may prejudicially affect the public interest in that they may unreasonably discourage the development of the primary and secondary industries within the region in which the Applicants' mills are located, and that are concerned directly or indirectly with the manufacture of newsprint. I accept the statement that newsprint manufacturing is beyond question one of Canada's most important industries and particularly is this true of the Province of Québec. The Application and the Intervention by the Government of the Province of Québec and the material they contain all fall within the concept of the public interest encompassed in Section 23 of the National Transportation Act, and reflect the kind of situation that the Committee ought to investigate and to allow the Applicants to develop further at a public hearing at which all factors can be fully explored.*

The three cases discussed above give a good understanding of the scope of the public interest in section 23 cases. To supplement this appreciation, a brief look is now taken at three other cases which the RTC found in the applicants' favour.

d) The Canoe Case

In the September 22, 1977 decision with respect to the Bateaux St-Maurice Inc. case (Canoe Case), the RTC found that a *prima facie* case had been established, leave to appeal was granted and then the RTC went on to find in favour of the applicant.** There had been a number of increases since 1973 in the rates charged for the non-carload movement of canoes with the most significant impact being on single shipments over short distances. The applicant held that the combined size of these increases had put his business in a difficult if not impossible position with respect to moving his product to market. The RTC found that the level of the rates as established by the most recent increase was prejudicial to the public interest and ordered them reduced to the level effective just before the second to last increase.

e) The Disparities Case

Another case of interest was the application filed by 16 woodpulp producers (Disparities Case) located in Western Canada.*** The producers

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* *Decision*, 1972, Anglo-Canadian Pulp and Paper Mills Limited *et al*., p. 37.

** *Decision*, September 22, 1977, In the matter of a complaint by Bateaux St-Maurice Inc. concerning tolls for the carriage of boats and canoes in single shipment via Railway Express.

*** *Decision*, August 17, 1979 - Application of British Columbia Forest Products Limited *et al*., pursuant to section 23 of the *National Transportation Act*.

The Committee has weighed all the evidence and has concluded that, for the Respondents to have unilaterally overturned this structure, this competitive relationship, this parity, either actual or relative, constituted, and still does constitute, an act prejudicial to the public interest.*

f) The Demurrage Case

The final case to be considered here is that of Columbia Containers (Demurrage Case).** The company asked the RTC that it be granted five days of free time before demurrage was charged on the rail cars it used for its export traffic. The company was at that time only being allowed 48 hours free time. The applicable tariff required that, for export tariff to be eligible for five days of free time, a company's facility must be on-dock, CP Rail claimed that Columbia Containers' facility was not. The RTC, however, held that it was on-dock and found in favour of the applicant.

In concluding the RTC stated:

> In summary, we find that the Applicant's traffic is export traffic and that its operation is an on-dock operation, and furthermore, we find that any tariff item which has existed from May 30, 1976 to the present time that reduced the free time allowance accorded the Applicant from five days to 48 hours amounts to a toll that prejudicially affects the public interest for the reasons already given. It follows from this that any demurrage changes arising out of the application of the prejudicial feature in the relevant toll are accordingly cancelled.***

Earlier in the Decision, the RTC discussed the importance of exports to Canada and related that to Columbia Containers' situation. It stated:

> In essence, the Applicant is seeking five days' free time allowance because its operations are those of an export shipper exclusively. Historically, export shipments have enjoyed greater free time allowance than has been the case with domestic movements. One obvious reason for this difference in treatment is that shipments destined for water shipment to foreign countries must first cover large distances by rail over difficult and often mountainous terrain, often through serious snow storms. Ships may be delayed in arriving at port. The frequent result of these circumstances is that cars fail to arrive before ship departures and must await the arrival of another vessel. Exports generally, and grain exports in particular,

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* Decision, 1979, British Columbia Forest Products Limited et al., p. 53.

** Decision, October 24, 1978 - Application of Columbia Containers Limited with respect to free time before the assessment of demurrage charges.

*** Decision, 1978, Columbia Containers Limited, p. 4.

complained that the long-standing rate parity they had enjoyed with producers of the Northwestern United States on shipments of woodpulp destined to U.S. locations had been destroyed by recent rate increases. The RTC granted the application by finding that the railways' disruption of the parity was an act which was prejudicial to the public interest* and the railways were ordered to restore parity.** With respect to the finding the RTC stated:

> The Committee finds that the rate situation brought about directly by the action, or inaction as the case may be, of the Canadian railways during 1976, disrupted a long-standing, accepted and well-understood reciprocal rate structure that had been established and refined over more than half a century. This freight rate relationship with competing mills in the Pacific northwest area of the United States was, and continues to be, vitally important to the overall economic well-being of the western Canadian pulp and paper industry.
>
> The current favourable earnings situation notwithstanding, which we understand to be due to the currency situation and therefore of an indefinite duration, the western Canadian mills rely on rate stability in that it influences their long-range marketing decisions. Moreover, it has been suggested that existing and potential rate instability is an unfavourable element which is discouraging possible new or expanded capacity in western Canada.

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* In a related case, the Canadian Pulp and Paper Association filed an application under section 23 requesting that the railways re-establish incentive rates for heavier carloadings on woodpulp shipments destined for the United States. The RTC found a prima facie case had been made and granted leave to appeal. Subsequently, the applicants requested that the case be postponed and this was granted sine die by the RTC. It appears that the applicants believed they would obtain the desired incentive rates if the railways were ordered in the Disparities Case to establish parity with the rates in the United States.

** Subsequently, CP and CN appealed the case to the Federal Court of Canada on a number of points of law and jurisdiction. At the same time the two railways made an application to the RTC for a stay of Order No. R-29767 pending the resolution of the appeal to the Federal Court of Canada. This Order set out the process for the restoration of rate parity. The application for the stay was denied in a decision dated January 21, 1980, and the railways then made an application for review of this decision. The Review Committee denied the application in a Decision dated April 11, 1980. On June 20, 1980, the Federal Court of Canada in a judgment from the Bench found CP and CN successful on only one point of their appeal. It held that the appellants had been denied a due hearing by the Committee on the diversion of Duncan Bay woodpulp shipments from Canadian railways at Vancouver to United States railways at Seattle. Order No. R-29767 was set aside (see Order No. R-31336) and a new hearing on the diversion of traffic was held. In a decision dated December 9, 1980, the Committee found that the rate increases had been an important factor in the diversion and that rate parity should be restored.

> are so vital to the economy of this country that special attention has been paid to demurrage by Parliament, the courts and the predecessors to this Commission. That attention is well-documented and we refer to it only to remind all parties that anything which interferes with the maintenance and growth of grain exports in Canada is a matter of very real concern to this Commission. We therefore agree with the Applicant that since its traffic is 100% export, it would seem to belong to a class of enterprise that should enjoy at least the five day free time allowance.*

A little later in the decision, the RTC considered the point made by the applicant that, whether the traffic was in bags or containers should make no difference to the entitlement to five days of free time. The RTC agreed:

> The Applicant took the position that its use of containers, as opposed to bagged or bulk shipments, should in no way prejudice its right to have five days free time. We must say that we can see no meaning, logic or sense in determining demurrage on the basis of whether goods are in a container or not. Even the Respondents do not seem to apply their own rules consistently. The Applicant drew our attention to a shipment of 13 000 tons of rapeseed oil shipped into the Port in tank cars and out in barrels which, according to the uncontradicted evidence of Mr. Moore, was accorded the five day free time. It is our opinion that free time should be determined not on whether an item is in a container or in bulk, but rather whether the item is export or domestic traffic. We hope that as a general rule, railways will abandon the use of such artificial tests in the future when considering the applicability of demurrage rules. We are unable to agree with Mr. Cuttell's explanation of why certain export traffic should be denied the usual export free time allowance. Simply put, we believe that once traffic is identified as export traffic, it follows that such traffic should be treated as such by the Respondents, and not treated as some sort of domestic-export hybrid. This principle is especially applicable where it is shown, as it is here, that there has been no abuse of railway cars by needlessly using them as storage boxes. A shipper who is trying to do business on the "direct-hit" basis should not have its success diluted by rigid demurrage rules which, it is arguable, have not kept pace with contemporary export transportation practices.**

Thus, once again, it was considered in the public interest that shippers facing quite similar circumstances should be treated similarly.

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* _Ibid._, p. 4.

** _Decision_, 1978, Columbia Containers Limited, p. 5.

5.3.2 Section 278 of the Railway Act

There has been one captive shipper application under subsection 278(1) since 1967. The applicant, Domtar Limited, requested the RTC in 1970 to establish the probable range within which a fixed rate would fall for the shipment of chlorine by rail from Beauharnois, Québec, to Windsor, Québec, and to Cornwall, Ontario. The RTC decided it was best to proceed by first hearing arguments from the applicant, respondents and interveners on whether Domtar was a captive shipper within the meaning of subsection 278(1) and whether the provisions of section 278 applied to agreed charges.

According to subsection 278(1) a shipper of goods is entitled to request the RTC to establish a probable range within which a fixed rate would fall if there is no alternative, effective and competitive service by a common carrier other than a rail carrier or a combination of rail carriers by which the goods may be shipped. Thus, of primary importance is the interpretation placed on the phrase "no alternative, effective and competitive service by a common carrier".

The RTC noted, in its Decision of September 1978 as to whether or not Domtar was a captive shipper, that the applicant had considered trucking as a viable alternative. It stated:

> In essence, Applicant told us that from the time at which its Beauharnois supplier changed from a delivered price basis to that of f.o.b. point of origin, it had been giving careful study of ways and means of obtaining more advantageous transportation charges. From the statements of the representative of Applicant and the exhibit filed by Respondent, Canadian National Railways, neither of which were challenged, it is clear to us that from the very beginning Applicant considered transportation of liquefied chlorine by truck as the real alternative. We are fully satisfied that Applicant went far beyond what might be called an academic exercise in its consideration of the trucking alternative; it went so far as to have discussions with Provost Cartage Inc. which had both licences and equipment to carry liquefied chlorine between those points that were clearly competitive with the published railway commodity rates and the rates in Agreed Charge 953. As far as Applicant was concerned it did not pursue the matter with Provost because, as it was explained to us, of Applicant's concern for the hazardous nature of the commodity which would be passing through populated areas of the country.*

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* Decision, September 1978 - Application of Domtar Limited under section 278(1) of the Railway Act and all other relevant sections of that Act and the National Transportation Act, p. 51.

The RTC went on to say that Domtar was, and had been, faced with an effective and competitive common carrier trucking service:

> We find that alternative, effective and competitive common carrier service existed at the time the application was filed and that alternative, effective and competitive common carrier service has continued to exist and currently exists.*

In reaching this conclusion, the RTC established that, at both the time of the application and of the Decision, there were common carrier truck rates for the shipment of chlorine which were below the rail agreed charge rate applicable to the chlorine movements.

The RTC also commented with respect to Domtar's statement that it had rejected the trucking option because of the risk associated with trucks carrying chlorine through populated areas. Domtar had used this risk factor in its argument that it was a captive shipper. The RTC stated with respect to safety that:

> We were especially concerned about some of the statements made relative to the question of safe transport of liquefied chlorine by highway. As already indicated the signs point to substantial growth in the movement of this commodity over the highways of North America, and there is no doubt that if not properly handled it can be very dangerous. On the other hand, the commodity is just as dangerous when being transported by railway. We have satisfied ourselves that in the present case the routes of movement of chlorine by railway transport do not differ appreciably from the routes of movement by highway relative to areas of population.
>
> The Chlorine Institute observes that the longer this commodity is in transit between shipper and consignee, the greater is the possibility of a hazardous occurrence. There is no doubt that highway transport offers this commodity the shortest time in transit. It has also been brought to our attention, as we viewed the advantages and disadvantages of moving liquefied chlorine by various modes of public transport that there is possibly less intensive surveillance of rail carriers in transit than is the case of motor carriers in transit. Periodically there are accidents on the highway involving tank trucks carrying liquefied chlorine, but, as is well known to the public, freight train derailments are not infrequent and there have been in recent times some very serious situations created by train wrecks in which several of these tank cars have been damaged, allowing the gas to escape.
>
> On balance, provided care is taken in the handling of the substance in question, we do not think the hazard involved in the transportation of this commodity by road is any greater than by rail, nor do we think that the hazard renders highway transport of this commodity any less effective.**

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* Ibid., p. 52.

** Decision, 1978, Domtar Limited, p. 60.

Finally, the RTC stated that it was not necessary to examine the question of whether section 278 applied to agreed charges since Domtar was found not to be a captive shipper.

5.4 Passenger Tariffs

This section presents both a description of the legislation and a brief review of the RTC Decisions pertaining to passenger tariffs.

5.4.1 Legislation

The provisions of the Railway Act governing passenger tariffs, like those applicable to freight rates, were changed in 1967 to reflect the policy of competition introduced by the NTA. Previous to this change it was necessary for passenger tariffs to be approved by the Board of Transport Commissioners. However, with the amendments made in 1967, it was only necessary that tariffs be filed before becoming effective. Thus, competition was allowed to replace the approval of the board.

As was the case for freight rates, however, provision was made for those situations where there was a lack of competition through the addition of subsection 280(4) to the Railway Act. This section gives the RTC the power to suspend or disallow any tariff which it finds is unjust, unreasonable or contrary to provisions of the Railway Act in those instances where there is not an adequate highway system to act as an alternative to rail travel. This power also applies to commuter-passenger trains. Subsection 280(4) reads as follows:

> (4) Where the Commission has reason to believe that
> (a) in respect of any passenger-train service of the company that is serving areas the principal points of which are not, in the opinion of the Commission, connected by an adequate highway or adequate highway system, or
> (b) in respect of any passenger-train service accommodating principally persons who commute between points on the railway of the company providing the service
>
> the passenger tariff or any portion thereof applying to such passenger-train service is unjust or unreasonable, or contrary to any of the provisions of this Act, the Commission may, notwithstanding any special Act or other Act, disallow the passenger tariff or any portion thereof that it finds unjust or unreasonable or contrary to this Act, and upon such suspension or disallowance, the Commission may require the company to substitute within a prescribed time a tariff of tolls satisfactory to the Commission in lieu thereof, or may prescribe other tolls in lieu of the tolls so suspended or disallowed. R.S., c. 234, s. 338; 1966-67, c. 69, s. 54.*

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* Railway Act, (1970), subsection 280(4).

In addition to the foregoing amendments, a general appeal section with respect to passenger tariffs, section 281, was also added to the Railway Act. This section is similar to section 23 in that any person who believes that there has been prejudice to the public interest must first apply for leave to appeal. If the RTC is satisfied that a prima facie case has been established it may grant leave to appeal and it may carry out such investigation as it deems necessary. Subsection 281(1) states:

> (1) Any person, if he has reason to believe that a tariff of tolls for the carriage of passengers of a company, or the conditions attachedto the carriage of passengers in such a tariff, are prejudicial to the public interest, may apply to the Commission for leave to appeal such a tariff or conditions, and the Commission, if it is satisfied that a prima facie case has been made, may grant leave to appeal and may make such investigation of such tariff or conditions as in its opinion may be warranted.*

Subsection 281(2) instructs the RTC in conducting its investigation to have regard to all matters it considers relevant. Furthermore, the subsection sets out three items the RTC should include among these considerations. The subsection states:

> (2) In conducting an investigation under this section, the Commission shall have regard to all considerations that appear to it to be relevant including
> (a) the effect of the tariff or conditions on the financial ability of the company and of other carriers of passengers to provide passenger services;
> (b) the effect of the tariff or conditions on the variety and quality of passenger services available to the public; or
> (c) whether control by, or the interest of a railway company in, another form of transportation service, or control of a railway company by, or the interest in the railway company of, any other transportation service may be involved.**

Additionally, subsection 281(3) states:

> (3) If the Commission, after a hearing, finds that the tariff or conditions in respect of which the appeal was made are prejudicial to the public interest, it may make an order requiring the company to remove the prejudicial feature of the relevant tariff or conditions, or such other order as in the circumstances the Commission considers proper, or it may report thereon to the Governor in Council for any action that is considered appropriate. 1966-67, c. 69, s. 55.***

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* Railway Act, (1970), subsection 281(1).

** Ibid., subsection 281(2).

*** Railway Act, (1970), subsection 281(3).

Finally, there is one other subsection of the Railway Act under which there have been no proceedings since 1967, but which should still be mentioned. Subsection (3) of section 291, in effect since 1919, states:

> (3) Whenever the Commission sees fit it may require the company to grant and issue commutation tickets at such rates and on such terms as the Commission may order. R.S., c. 234, s. 350.*

5.4.2 Cases Decided under Subsection 280(4) of the Railway Act

To date, only commuter fares have been dealt with under subsection 280(4). The approach adopted by the RTC with respect to commuter fare increases was reflected in the 1971 Decision dealing with increases proposed by CN for its Montréal area commuter services.** The RTC first satisfied itself that the commuter services had incurred a loss in 1970 and that the additional revenues from the increase would not offset the loss. The Committee then went on to say:

> Commutation fares have been the subject of a number of hearings in the past. The principle which has been applied was declared in a judgment of the Board of Transport Commissioners, dated August 4, 1954, reported in 71 CRTC 138, at page 152, as follows:
>
> > "In dealing with commutation services I think the time has arrived to apply a general rule that a railway is entitled to charge commutation rates at a level that will return at least the railway's reasonable and actual out-of-pocket cost of furnishing the commutation service concerned, and that the railway should not be required by this Board to provide or continue to provide commutation services which will not meet that cost."
>
> This principle has been applied in respect of all commuter fare increases since that time and we see no valid reason to depart from it in this case. The principle was last applied in 1970 when Canadian Pacific tariffs providing for increased commuter fares were permitted to go into effect on October 1, 1970. At that time the Commission announced that it was conducting a general investigation into the revenues and costs of providing rail commuter services in Canada and said that the increased fares would be subject to any future adjustments that may be considered warranted as a result of the general investigation of commuter services.

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* Railway Act, (1970), subsection 291(3).

** Decision, August 28, 1971. In the matter of increased commuter fares of CN in the Montréal area.

> We have received objections to the increases in the Canadian National commuter fares, including objections that the service is inadequate. The Committee's Inspector in Montréal has investigated the major complaints regarding Canadian National commuter service. Some of these have been found to be as represented, and some have been found to be exaggerated. Some complaints could be rectified by additional expenditures which would result in higher cost and a greater loss. We consider, however, that the Canadian National services are meeting essential commuter transportation needs, within the requirements of Sections 315 of the Railway Act, and that the higher fares under the new tariffs are not incommensurate with the services provided. However, these are all rates that will be dealt with in connection with the general investigation of commuter rates.
>
> We will permit the new tariffs to go into effect May 1, 1971, subject to any future adjustments that may be considered warranted as a result of our general investigation of commuter services.*

5.4.3 Cases Handled under Section 281 of the Railway Act

The eight applications which have been dealt with under section 281 since 1967 are listed in Table 5.2. It is seen that seven of them pertained to rates while the other concerned a condition of a tariff. The discussion that follows first briefly looks at the disposition of the seven rate cases and then goes on to examine in more detail the case having to do with a condition of a tariff.

5.4.3.1 Applications Pertaining to Rates

The first of the seven applications which pertained to rates was that of Emarcy Tours: the applicant claimed that CN's tariff of tolls for the carriage of passengers on tours between Windsor and Toronto was prejudicial to the public interest because the rate was not low enough. The RTC found that the applicant had not established a prima facie case.

The applicants in the next three cases held that rate increases proposed by CN and CP in 1974, 1975 and 1978 respectively were prejudicial to the public interest. In a Decision dated January 15, 1975 the RTC found, with respect to both the 1974 and 1975 cases, that the applicants had established a prima facie case and leave to appeal was granted. The two cases were, however, eventually discontinued. With respect to the 1978 case, the applicants withdrew the application before a decision could be made on whether a prima facie case had been established.

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* Decision, 1971, CN commuter fares in Montréal area, p. 2.

Table 5.2

PROCEEDINGS UNDER SECTION 281 OF THE RAILWAY ACT

Application	Date of Application	Prima Facie	Final Disposition
1. Emarcy Tours		- applicant has not made prima facie case - leave to appeal denied	
2. Consumers' Association of Canada et al.	February 1974 & March 1974	- applications for leave to appeal tariffs of CN and CP considered with application for leave to appeal CN and CP tariffs of January 15, 1975 - prima facie case established - leave to appeal granted	- discontinued
3. Consumers' Association of Canada et al.	January 1975	- application for leave to appeal CN and CP tariffs considered with applications to appeal 1974 CN and CP tariffs - prima facie case established - leave to appeal granted	
4. Consumers' Association of Canada et. al.	June 1978	- application for leave to appeal withdrawn	
5. Miss Clarris Kelly	October 1978	- prima facie case established - leave to appeal granted	- tariff prejudicial - amendments to be made to tariff
6. Vancouver Island E&N Steering Committee	May 7, 1979	- application for leave to appeal revised tariff - prima facie case was established - leave to appeal granted - VIA applied to Review Committee for stay of Order granting leave to appeal - Review Committee rejected application - RTC to hold hearing	

Table 5.2 (cont'd)

Applicant	Date of Application	Prima Facie	Final Disposition
7. Paul J. Evraire	October 18, 1979	- application for leave to appeal passenger fares between Locust Hill and Toronto - prima facie case established - leave to appeal granted - VIA applied to Review Committee to quash and set aside decision of RTC to grant leave to appeal - Review Committee denied VIA's application	
8. John Pearce Transport 2000 Atlantic (application also under Section 23)	October 25, 1979	- application for leave to appeal passenger tariffs on Dominion Atlantic Railway (DAR) between Halifax and Yarmouth - parties agree to suspend application in view of DAR discontinuance hearings	- application withdrawn

The sixth application was filed by the Vancouver Island E & N Steering Committee who sought leave to appeal a revised tariff and the seventh was filed by Paul J. Evraire who sought leave to appeal passenger fares between Locust Hill and Toronto. In both cases, the RTC found that a prima facie case had been established and granted leave to appeal. At the time of writing the final disposition of these two cases was not known.

The eighth application having to do with rates was made by John Pearce, Transport 2000, Atlantic, who sought leave to appeal tariffs on the Dominion and Atlantic Railway between Halifax and Yarmouth. The parties to the dispute agreed to suspend the application in view of the discontinuance hearings on this service (see Chapter 2 on experimental service) and the application was later withdrawn.

5.4.3.2 Application Pertaining to Conditions of a Tariff: The Clarris Kelly Case

The fifth and final case is discussed in more detail because of its substantively different nature from the rate-increase cases. The cause for complaint in this case was a provision in VIA Special Local and Joint Passenger Tariff, CTC-1 which appeared in Section 13-D under the heading, "Permanently Disabled Person and Attendant". The provision stated:

> A person who must be carried or pushed to train-side in a wheelchair and then carried on board and who obviously cannot attend to his personal needs on the train must be accompanied by someone who will be responsible for his well-being. The train crew cannot be responsible for the care of an invalid.*

The applicant in this section 281 case was allegedly refused access to a passenger train because of this provision. The RTC found that a prima facie case had been established and leave to appeal was granted. The RTC stated:

> After examining all submissions on file the Committee is of the view that a prima facie case of prejudice to the public interest has been shown. It is convinced that the persons affected by the provision in the VIA Special and Joint Passenger Tariff I, CTC-I unquestionably constitute an element of the public interest and the provision in the said tariff requiring an attendant to travel with a person in the situation of Miss Kelly is prima facie prejudicial to that element of the public interest.**

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* Decision, November 30, 1979, Complaint written on behalf of Clarris Kelly concerning Via Special Local and Joint Passenger Tariff, CTC-I, Section 13-D, p. 5.

** Decision, 1979, Clarris Kelly, p. 5.

Subsequent to an investigation and hearing, the RTC issued a final decision in March of 1980 that held that the provision was prejudicial to the public interest.*

In the decision, as is required by section 281, the RTC examined all the relevant aspects of the case as they related to the public interest. This included, among others, a look at the effect of the provision on the financial ability of the company to provide passenger services as was required by paragraph 281(2)(a) and the effect of the provision on the variety and quality of passenger services as was required by paragraph 281(2)(b).** Aspects of the case which did not fall within either of these two areas were discussed under the heading of other relevant considerations.

With respect to the effect of the provision on the financial ability of the company to provide passenger services, the RTC stated that the estimated cost of the manual lifting of handicapped persons on and off of trains was not so great as to prevent VIA from providing the service. Furthermore, the liability of the company with respect to the handicapped was no different from the liability it had to the general public. Thus, the issue of liability should not have prevented the company from providing the service.

The RTC stated, with regard to paragraph 281(2)(b), that the requirement that independent and self-reliant disabled persons travel with attendants had an adverse effect on the variety and quality of passenger services for them. This was so because the requirement acted as a barrier to their travelling by train as it was difficult to arrange for attendants and the cost of providing lodging and food for them at destination could be prohibitive. The RTC stated that the interests of the transportation-handicapped and the general public coincided, for, to prevent the disabled from using the train in the end, would be a loss to society as a whole.

The question of the safety of the public and of the transportation-handicapped was also discussed under paragraph 281(2)(b). The RTC held that the safety of the public would not be significantly affected if the self-reliant handicapped were allowed to travel without attendants. Furthermore, the RTC noted that the disabled had learned to cope with their handicaps and that the applicant and an intervener, both of whom were disabled, had accepted the greater risk they faced.

The question of liability was also discussed. The RTC stated that a handicapped person travelling alone should not have to sign a waiver of liability and that, with respect to liability, they should be treated the same as other persons travelling on a train. It was further stated that it would not be correct to have the railway require its employees to assume all risks and absolve the railway of responsibility.

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* Decision, March 14, 1980 - Application on behalf of Clarris Kelly pursuant to section 281 of the Railway Act respecting VIA Special Local and Joint Passenger Tariff I, CTC-I, Section 13-D.

** It was decided by the RTC that paragraph 281(2)(c) was not applicable in this case.

The RTC concluded the discussion on paragraph 281(2)(b) by stating that it did not feel that the potential risk to the safety of employees doing the lifting was that great.

After discussing the aspects of the case applicable to paragraphs 281(2)(a) and (2)(b), the RTC went on to examine three other considerations relevant to the public interest: self-reliance, prior history of the tariff and advance notice. The RTC first noted that VIA's intention to develop a set of questions to determine if a handicapped person was self-reliant was a long-term solution and that meanwhile a short-term solution was necessary. The RTC held that:

> It is our view that, as a matter of policy, self-reliant handicapped people should be allowed to travel alone on the train ...*

It then went on to set out the short-term solution:

> It is our view that, as a short-term solution, a more specific indication of what is self-reliant is needed immediately in the tariff to the effect that a person who is able to take care of his personal needs, those needs being his washroom, food and medical needs, shall be allowed on the train with or without an attendant. In the case where an attendant is needed, the attendant should be allowed to travel free as in the past.**

The RTC further stated that the determination of self-reliance should be left to the handicapped person. The RTC reviewed the prior history of the tariff and noted that, previous to March 1977, neither CN or CP were overly concerned about handicapped persons travelling unaccompanied. Only CN had required an attendant and neither railway had required a waiver of liability. The RTC questioned why the situation had changed to that of requiring an attendant.

The RTC stated with regard to advance notice that it had no objection to the tariff requiring that 24-hour advance notice be given to the railway by persons requiring a manual lift. It was noted in the Decision that the handicapped understood the need for advance notice.

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* Decision, 1980, Clarris Kelly, p. 37.

** Ibid., p. 37.

Finally, the Conclusions and Observations of the Decision were as follows:

> From the foregoing we conclude:
>
> (a) that the condition in the tariff, requiring Miss Kelly and other self-reliant handicapped persons in wheelchairs to travel with an attendant, is prejudicial to the public interest;
> (b) that the said tariff should be amended, interpreted, or otherwise changed to allow self-reliant handicapped persons in wheelchairs on the train without an attendant;
> (c) that the said tariff shall permit self-reliant handicapped persons as well as non-self-reliant ones if they so wish, to travel with an attendant who shall travel free of charge;
> (d) the decision that one is a self-reliant person, within VIA's definition of the same, should be made by the handicapped person concerned;
> (e) that the tariff should be further amended by deleting references to persons confined to wheelchairs as "patients" or "invalids";
> (f) that arrangements for the manual lifting of Miss Kelly and other self-reliant, handicapped persons be provided for at the following stations, within the next three months:
> Montréal, Vancouver, Winnipeg, Ottawa, Edmonton, London, Windsor, Calgary, Dorval, Moncton, Halifax, Jasper and Toronto;
> (g) that VIA should report to the Committee, at thirty-day intervals within that period, to indicate its progress in implementing the said manual lifting program;
> (h) that no waiver of liability ought to be imposed on Miss Kelly or other self-reliant handicapped persons using the train without an attendant, and those persons should have a right of action against the company just as other members of the public.
>
> Despite the above conclusions, we wish to emphasize that we approve of and commend VIA's efforts in its longer range and intermediate program in improving transportation facilities for the handicapped. We believe VIA is sincere and dedicated in such efforts. We have read with great interest Exhibit VIA-1 and have heard evidence at the hearing on their information booklet, and their plans for refurbished and new units which will include accessible washrooms and dining facilities. We have also heard described the station and car-based mechanical loading devices. We commend VIA on all of these excellent and well thought-out programs. But, as the Applicant has said, a small step is needed here. Mr. O'Connell, a witness for the Respondent, stated that manual lifting was the short-term solution. We too are convinced that manual lifting, along with a change in the tariff to indicate that persons like Miss Kelly are to be considered as self-reliant, is the only feasible short-term solution.*

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* Decision, 1980, Clarris Kelly, p. 40.

5.5 Summary

The essence of the NTA was the replacement of regulation by competition. The Act gave the railways the freedom to set rates and the CTC residual rate regulatory powers. This new regulatory structure reflected the fact that the railways had gradually lost much of their monopoly power through growing competition from other modes of transport.

This chapter was concerned with cases which came under the new residual rate control provisions assigned to the CTC in 1967. Its primary focus, not surprisingly, was on freight rate disputes dealt with under section 23 of the NTA. This section of the Act, which provides a general route of appeal over and above specific provisions of the Railway Act and the Transport Act, offers protection to the public interest from acts, omissions or tolls prejudicial to it.

It was seen that the RTC, in dealing with section 23 cases, did not attempt to construct an all-encompassing definition of the public interest in the realization that it would not be proper to do so given that the circumstances of future cases might be quite different. Instead, the way was left open to identify new elements of the public interest, as the situation might require, which was in keeping with the intent of the non-restrictive language of the Act.

Various elements of the public interest were identified in the cases presented. It was observed that an act, omission or rate was judged prejudicial to the public interest if it could be conclusively shown that it created a barrier to offset the natural economic opportunities facing the applicant. This was taken to include the requirement that shippers sending products with reasonably similar handling characteristics in similar circumstances should be treated equally. It was noted that often on first glance shippers' situations seem quite similar and this leads to the conclusion that there is an anomaly between their rates. However, on further investigation it is found that each shipper operates under different market conditions and that this is the cause of the difference between the rates.

Besides section 23 cases, the analysis also examined the one freight case the RTC had handled under section 278 of the Railway Act. In this captive shipper case Domtar Limited had filed an application pursuant to subsection 278(1) requesting the RTC to establish the probable range within which a fixed rate would fall for shipments of chlorine from one specific step to two others.

The first thing the Committee had to do was determine if Domtar in fact was a captive shipper faced by "no alternative, effective and competitive service by common carrier." The RTC found that there was an effective and competitive common carrier trucking service available by which the chlorine could be shipped. It therefore held that Domtar was not a captive shipper within the meaning of subsection 278(1). In light of this decision there was no need for the Committee to proceed to establish the probable range of rates.

In addition to freight rate cases, the chapter also examined passenger tariff disputes which had been dealt with under either subsection 280(4) or section 281 of the Railway Act. It was noted that subsection 280(4) gives the RTC the power to suspend or disallow any passenger tariff that applies to either a passenger service that operates in areas that have inadequate highway systems or a commuter service and which it finds to be unjust, unreasonable or contrary to provisions of the Railway Act. All of the cases handled to date under this subsection had concerned commuter fare increases. It was observed that the Committee in assessing the requirement for the increases had taken the position that the railways should be allowed to charge commuter fares which at least covered the out-of-pocket costs of providing the service.

It was noted that section 281 provides a route of appeal to any person who believes that a passenger tariff of tolls or any condition attached to the tariff is prejudicial to the public interest. The section is similar to section 23 of the NTA in that the applicant must first apply for leave to appeal.

Eight applications were filed pursuant to section 281 within the period covered by the analysis. Seven of these had sought leave to appeal tariffs of tolls and one the condition attached to a tariff. It was noted with respect to the status of the former seven that two of the applications were withdrawn before it was determined whether a prima facie case had been established and for another one it was found that prima facie case had not been established. The applicants in the other four cases concerning rates were granted leave to appeal. Two of these four cases were subsequently discontinued and the outcome of the other two was not known at the time of writing.

The one other application dealt with under section 281 had sought leave to appeal a provision of a VIA tariff which required that persons in wheelchairs had to be accompanied by an attendant. The RTC granted leave to appeal and after an investigation and hearing issued a decision which found that the provision was prejudicial to the public interest. It held that the condition which was appealed was a barrier to independent and self-reliant disabled persons using the train and because of this it had an adverse impact on the quality of passenger services. It stated that the tariff should be changed to allow self-reliant handicapped persons in wheelchairs to travel on trains without attendants. Furthermore, it said that to meet the immediate need for a way of determining self-reliance, the short-term solution was to let the handicapped person decide himself.

Chapter 6

SUMMARY AND CONCLUSIONS

The two major socio-economic regulatory activities of the RTC consist of rationalization of railway services and residual rate control. When performing its regulatory duties in these areas, the RTC must take into consideration the national transportation goal of an economic, efficient and adequate transport system.

In order to be able to fulfill their role in the Canadian transportation system, the railways must adjust their supply of services to serve growth in traffic but they must also make adjustments where demand is no longer sufficient to earn a profit. Services have to be dropped or changed and plant abandoned if the losses in unprofitable areas are not to affect the overall efficiency and economic position of a railway.

The RTC must, however, consider, in addition to efficiency and financial viability, the adequacy of alternative transport services that will be available after a service is dropped or altered. If it considers that the alternative will be inadequate, it must determine if the inconvenience to users will be sufficient to warrant continuation of the service. When making this determination for passenger services or branch lines, the RTC is, at the same time, required to consider the actual losses incurred in the operation. Uneconomic branch lines are eligible for subsidies under the Railway Act and so are uneconomic passenger services though with the creation of VIA passenger deficits are now paid by the Department of Transport. The Committee, in examining the actual losses, is thus, among other things, able to consider the cost to the public treasury of continued operation versus benefits that will be derived by the users.

Each case considered by the RTC is decided on its own merits against the applicable criteria set out in the NTA and the Railway Act. Looking across cases though, it is possible to determine that the Committee has, in general, been consistent in its approach from a socio-economic viewpoint.

For passenger-train discontinuance decisions, it was found that the RTC was consistent in applying the criterion of usage when deciding to allow or disallow an application. The Committee took the position that an uneconomic passenger train, serving an area where alternative means of transport were available, should be continued as long as there was a reasonable level of patronage. Only in those instances where isolation made train service a necessity was usage not the primary consideration.

In addition to usage, however, there was, starting in 1979, more emphasis placed on the improvement of services. In past decisions, the Committee pointed out that an order not to discontinue a service did not relieve a railway from the responsibility of continuing attempts to reduce losses and improve services. Quite often suggestions for improvements to services were given in the decisions. However, in 1979 in the Order and report on the Halifax — Yarmouth* service and the Order and Decision on the Prince Albert-Saskatoon-Regina** service, the RTC went further and placed more emphasis on improving the quality of service. It set out several improvements to be made to such things as schedules, stations, equipment, fares and promotion. Once these improvements were made each service was to be given a one-year experimental period to demonstrate its potential in the passenger-transport market. At the end of this period, the RTC was to evaluate the results and determine if the service should be continued. In each case, the Committee also called for interested parties to form a group to establish the future role of the service and their recommendations were to form part of the re-evaluation of the service.

It was seen that the RTC with respect to Prairie branch lines was effectively prevented from functioning prior to 1975 mainly due to the freezes placed on abandonments by the government. Subsequently it was also faced by strong constraints. The Hall, PRAC and Neil Inquiries and the abandonment freezes which accompanied them restricted the rate at which the Committee could proceed. In addition all but a few of the lines considered by it had been scrutinized by one or more of the inquiries and had been recommended to be considered for abandonment. Thus, the lines handled by the Committee were either not in use or carried traffic infrequently and often were in poor physical condition.

In these circumstances, it is not surprising that all but five applications were given full approval. In general, the Committee found that, although shippers would suffer some inconvenience, alternative transport services with sufficient capacity were available to them within a reasonable distance and that the impact on the economies of the areas concerned would be minimal.

As of October 1980, five applications had been fully or partially denied, one in 1975 and four in 1980. These cases were fully discussed in Chapter 3: for the latter four applications, it was noted that they were handled by the Western Division of the CTC. Since there was only one previous denial with which to compare, it was not possible to determine if these three cases represented a change in approach.

With respect to Nonprairie branch lines it was also determined that the decisions were consistent from a socio-economic viewpoint. It was found that the Committee ordered lines continued in operation if one of two sets of circumstances prevailed: either abandonment would have imposed too large an economic burden on current shippers or future traffic prospects would have offered the potential for the line to become economically viable.

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* Report, September 19, 1979 - Application on behalf of Dominion Atlantic Railway to discontinue passenger-train service between Halifax, Kentville and Yarmouth.

** Decision, November 8, 1979 - Application of CN to discontinue passenger-train service between Regina, Saskatoon and Prince Albert.

Finally, in the area of rationalization of services, there was the question of the adequacy of service to customers when station agents were to be replaced by central agencies and trucks were to be used in the place of trains. The RTC had consistently followed the same approach with respect to the removal of station agents. It had, with few exceptions, approved the removal of agents and found that the service to be provided by the new central units would be equal to or better than that given by station agents.*

In the case of the substitution of trucks for rail service, the RTC held that a railway may provide delivery by any mode it chooses but that the obligations imposed on the railway by section 262 of the Railway Act, to provide adequate and suitable accommodation, still remained. The RTC found, with respect to Canadian Pacific Transport's withdrawal of intraprovincial truck services in Saskatchewan, that service by independent trucking firms allowed Canadian Pacific to discharge its obligations under section 262.**

The RTC's other main socio-economic regulatory activity is residual rate control. In this area, the Committee had been mainly concerned with cases coming under section 23 of the NTA.

An examination of the section 23 cases showed that the RTC did not attempt to set down an all-encompassing definition of the public interest. This was because it was felt that the circumstances of future cases could be quite different and such an approach would enable the Committee to identify new elements of the public interest as they arose.

From the cases handled to date it was observed that an act, omission or rate was prejudicial to the public interest if it could be conclusively shown that this put the applicant at a disadvantage which offset the natural economic opportunities available to him. This embodied the concept that rail customers, shipping products which had reasonably similar handling characteristics and which were being shipped in similar circumstances should be treated equally. It was cautioned, however, that often what appeared on initial consideration to be a rate anomaly turned out to be a reflection of real differences in market situations.

Also with regard to rates and tariffs, the RTC decided on the following cases with reference to the appropriate sections of the Railway Act: one captive shipper case under section 278; some commuter fare increases under subsection 280(4) and five passenger-tariff cases under section 281. These cases were all fully discussed earlier.

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* Decision, October 30, 1970 - Application of CP for authority in respect of proposed Customer Centre at Moose Jaw to remove 43 agents, 1 caretaker-agent and 22 caretakers from stations on Moose Jaw Division.

** Decision, March 21, 1977 - In the Matter of section 262 Railway Act, Chapter R-2 Revised Statutes of Canada, 1970, respecting accommodation for traffic to be furnished by CP Limited in Saskatchewan.

Of particular interest was the fifth case dealt with under section 281, wherein the RTC found that provision of VIA's passenger tariff covering the use of trains by the disabled was prejudicial to the public interest. This provision required that persons in wheelchairs had to be accompanied by an attendant. The Committee held that this requirement acted as a barrier to independent and self-reliant disabled persons using the train and that it thus could be considered to have an adverse effect on the quality of passenger services.*

The RTC also stated that the short term solution was to allow self-reliant handicapped persons to travel alone and that the determination of self-reliance should be left to the handicapped person.

It was thus found that the RTC had been consistent in its approach to decisions on the rationalization of services and residual rate control. It was seen that the Committee had continually made an effort in its decisions to obtain a reasonable balance between the requirements for an economic and efficient transport system and the need for an adequate system. Finally, the Committee's consideration of the public interest had included all the items required by law and any other matter which it had felt was relevant to the question being decided.

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* Decision, April 24, 1980 - Application on behalf of Clarris Kelly pursuant to section 281 of the Railway Act respecting VIA Special Local and Joint Passenger Tariff I, CTC-1, Section 13-D.